

United States 13
Circuit Court of Appeals
For the Ninth Circuit.

WILLAMETTE NAVIGATION COMPANY, a
Corporation,

Appellant,

vs.

HARTFORD FIRE INSURANCE COMPANY,
a Corporation,

Appellee.

Apostles on Appeal.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

FILED

SEP 11 1922

F. D. MONCKTON,
CLERK.



United States
Circuit Court of Appeals
For the Ninth Circuit.

WILLAMETTE NAVIGATION COMPANY, a
Corporation,

Appellant,

vs.

HARTFORD FIRE INSURANCE COMPANY,
a Corporation,

Appellee.

Apostles on Appeal.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.



INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

| | Page |
|---|------|
| Amended Answer to Interrogatories Propounded by Respondent..... | 38 |
| Answer to Interrogatories Propounded by Respondent..... | 25 |
| Answer to Libel..... | 25 |
| Assignment of Errors..... | 202 |
| Certificate of Clerk U. S. District Court to Appostles on Appeal..... | 206 |

DEPOSITION ON BEHALF OF LIBEL- ANT:

| | |
|---|----|
| HEGDALE, OLAF..... | 40 |
| Cross-examination | 45 |
| Redirect Examination..... | 63 |
| Recross-examination..... | 65 |
| Redirect Examination..... | 68 |
| Recross-examination..... | 68 |
| Redirect Examination..... | 71 |
| Recross-examination..... | 72 |
| Exceptions to Libelant's Answers to Respondent's Interrogatories..... | 37 |
| Exceptions to Second Amended Libel..... | 22 |

| | Index. | Page |
|--|--------|------|
| EXHIBITS: | | |
| Exhibit "A" Attached to Libel—Policy of Insurance Issued to Willamette Navigation Company..... | | 9 |
| Libelant's Exhibit No. 1—Letter Dated June 13, 1913, Ira S. Lillick to Adam Gilliland..... | | 87 |
| Libelant's Exhibit No. 2—Letter Dated June 17, 1913, Adam Gilliland to Ira S. Lillick..... | | 95 |
| Libelant's Exhibit No. 3—Proof of Loss on Certain Property Owned by Crown-Columbia Paper Company..... | | 101 |
| Libelant's Exhibit No. 4—Letter Dated September 17, 1913, Ira S. Lillick to Hartford Fire Insurance Company.. | | 120 |
| Libelant's Exhibit No. 5—Bill of Lading.. | | 126 |
| Libelant's Exhibit No. 8—Letter Dated February 24, 1913, Willamette Navigation Company to Henry Hewitt & Co. | | 137 |
| Libelant's Exhibit No. 9—Letter Dated February 28, 1913, Henry Hewitt & Company to Willamette Navigation Company | | 138 |
| Libelant's Exhibit No. 10—Letter Dated April 29, 1913, E. K. Stanton to Wm. Pierce Johnson..... | | 140 |
| Libelant's Exhibit No. 11—Letter Dated May 1, 1913, Willamette Navigation Company to Henry Hewitt & Company | | 143 |

EXHIBITS—Continued:

| | |
|---|-----|
| Libelant's Exhibit No. 12—Letter Dated May 16, 1913, Henry Hewitt & Com- pany to Willamette Navigation Com- pany | 144 |
| Libelant's Exhibit No. 13—Letter Dated May 17, 1913, Willamette Navigation Company to Henry Hewitt & Company | 145 |
| Libelant's Exhibit No. 14—Letter Dated May 22, 1913, Henry Hewett & Com- pany to Willamette Navigation Com- pany | 146 |
| Libelant's Exhibit No. 15—Letter Dated May 26, 1913, Willamette Navigation Company to Henry Hewitt & Com- pany | 147 |
| Libelant's Exhibit No. 16—Letter Dated March 11, 1913, Henry Hewett & Com- pany to Willamette Navigation Com- pany | 151 |
| Libelant's Exhibit No. 17—Affidavit of W. B. Honeyman, Dated May 25, 1913 | 153 |
| Libelant's Exhibit No. 18—Letter Dated January 21, 1913, Wm. B. Honeyman to C. S. Timberlake..... | 155 |
| Libelant's Exhibit No. 19—Proof of Loss. | 159 |
| Libelant's Exhibit No. 20—Statement of Loss—Steamer "Ruth"..... | 172 |
| Libelant's Exhibit No. 21—Letter Dated February 28, 1913, Willamette Pulp | |

| Index. | Page |
|--|------|
| EXHIBITS—Continued: | |
| & Paper Company to Standard Marine Insurance Company..... | 175 |
| Libelant's Exhibit No. 22—Letter Dated March 20, 1913, C. S. Timberlake to Adam Gilliland..... | 189 |
| Respondent's Exhibit "A"—Receipt Dated April 24, 1913, Signed by Willamette Navigation Company..... | 98 |
| Respondent's Exhibit "B"—Letter Dated March 3, 1913, Willamette Navigation Company to Henry Hewitt & Company | 148 |
| Respondent's Exhibit "C"—Letter Dated June 2, 1913, Henry Hewett & Company to Willamette Navigation Company | 149 |
| Respondent's Exhibit "D"—Unsigned Letter Dated June 3, 1913 to Henry Hewett & Company..... | 151 |
| Respondent's Exhibit "E"—Letter Dated January 22, 1913, Henry Hewett & Company to C. S. Timberlake..... | 157 |
| Final Decree..... | 199 |
| Interrogatories Propounded to Libelant..... | 32 |
| Libel | 6 |
| Notice of Appeal..... | 201 |
| Opinion and Order to Enter Decree in Favor of Respondent..... | 198 |

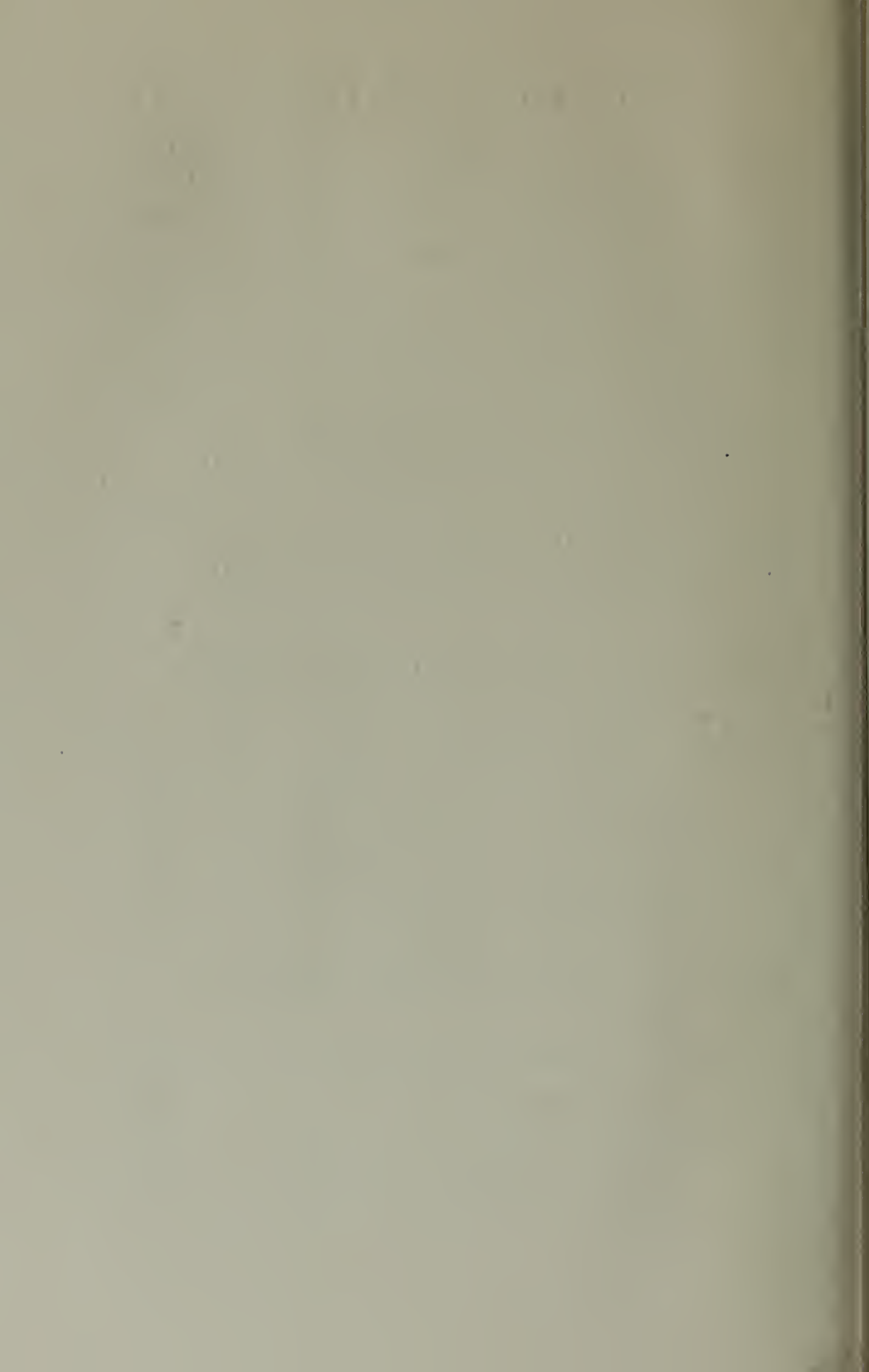
| | Index. | Page |
|---|--------|------|
| Order Overruling Exceptions to Second | | |
| Amended Libel..... | | 25 |
| Praeipce for Apostles on Appeal..... | | 1 |
| Second Amended Libel..... | | 18 |
| Statement of Clerk U. S. District Court..... | | 3 |
| Stipulation and Order Concerning Original Ex- | | |
| hibits | | 205 |
| Stipulation and Order Extending Time to and | | |
| Including July 15, 1922, to File Apostles | | |
| on Appeal..... | | 208 |
| Stipulation and Order Extending Time to and | | |
| Including August 15, 1922, to File Apostles | | |
| on Appeal..... | | 209 |

TESTIMONY ON BEHALF OF LIBEL-
LANT:

| | |
|----------------------------------|-----|
| GILLILAND, ADAM..... | 85 |
| Recalled | 119 |
| Recalled | 152 |
| PINKHAM, HARRY (In Rebuttal).... | 196 |
| Cross-examination..... | 197 |
| WHITNEY, CHARLES M..... | 136 |

TESTIMONY ON BEHALF OF RESPOND-
ENT:

| | |
|---------------------------------|-----|
| GILLILAND, ADAM (Recalled)..... | 165 |
| Cross-examination..... | 185 |
| SUTRO, OSCAR..... | 97 |
| Cross-examination | 99 |
| Redirect Examination..... | 117 |



In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

IN ADMIRALTY—No. 15,514.

WILLAMETTE NAVIGATION CO., a Cor-
poration,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Cor-
poration,

Respondent.

Praeceptum for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit upon the appeal heretofore perfected in this court, and including in said transcript the following pleadings, proceedings and papers on file, to wit:

1. All those papers required by Section 1 of Paragraph 1 of Rule 4 of the Rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

2. All the pleadings in said cause and all the exhibits annexed thereto.

3. All the testimony and other proofs adduced in the case, including the testimony taken at the trial, all depositions taken by either party and admitted in evidence, and all exhibits introduced by either party, said exhibits to be sent up as original

exhibits for the opinion and decision of the Court. [1*]

4. The final decree and notice of appeal.

5. The assignment of errors.

Dated: May 15, 1922.

IRA S. LILLICK,
Proctor for Libelant.

[Endorsed]: Due service and receipt of a copy of the within Praecipe is hereby admitted this 15th day of May, 1922.

COOGAN & O'CONNOR,
ANDROS & HENGSTLER,
Proctors for Respondent.

Filed May 25, 1922. W. B. Maling, Clerk. By
C. M. Taylor, Deputy Clerk. [2]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 15,514.

WILLAMETTE NAVIGATION COMPANY,
a Corporation,

Libelant,

vs.

HARTFORD FIRE INSURANCE COMPANY,
a Corporation,

Respondent.

*Page-number appearing at foot of page of original certified Apostles on Appeal.

Statement of Clerk U. S. District Court.

PARTIES.

Libelant: WILLAMETTE NAVIGATION COMPANY, a Corporation.

Respondent: HARTFORD FIRE INSURANCE COMPANY, a Corporation.

PROCTORS.

For Libelant and Appellant: IRA S. LILLICK, Esq., San Francisco, California.

For Respondent and Appellee: ANDROS & HENGSTLER; GOLDEN W. BELL, Esq., and COOGAN & O'CONNOR. [3]

PROCEEDINGS.

1914.

January 5. Filed libel for \$5621.85, on marine insurance policy.

13. Issued citation for appearance of respondent, which was returned with the following affidavit of service attached thereto:

“J. A. Olson, being duly sworn, deposes and says; that he is, and was at the time of the service of the citation herein referred to, a citizen of the United States, over the age of eighteen years and not a party to the within-entitled action; that he personally served the within citation on the hereinafter named defendant, whom deponent knew to be the general agent of the defendant named in said cita-

tion, by delivering to and leaving with Dixwell Hewitt, the general agent of said defendant, personally, on the 13th day of January, 1914, at the City and County of San Francisco, in the State of California.

J. A. OLSON.

Subscribed and sworn to before me this 24th day of January, 1914.

LEORA HAIL, (Seal)

Notary Public, in and for the City and County of San Francisco, State of California."

- | | | |
|-----------|----|--|
| May | 1. | Filed exceptions to libel. |
| September | 5. | Hearing exceptions to libel, argued and submitted. (Hon. M. T. Dooling, Judge). Ordered exceptions to libel sustained; libellant granted one week to file amended libel. |

1915.

- | | | |
|----------|-----|---|
| January | 12. | Filed amended libel. |
| April | 29. | Filed exceptions to amended libel. |
| June | 16. | Filed second amended libel. |
| December | 29. | Filed exceptions to second amended libel. [4] |

1916.

- | | | |
|---------|-----|--|
| January | 15. | Hearing exceptions to second amended libel. Hon. M. T. Dooling, Judge. Argued and submitted. |
|---------|-----|--|

27. Filed order overruling exceptions to second amended libel.

October 13. Filed answer to libel, with interrogatories propounded to libelant.

1919.

September 26. Filed libelant's answers to interrogatories propounded by respondent.

30. Filed exceptions to libelant's answers to interrogatories propounded by respondent.

November 22. Ordered exceptions to libelant's answers to interrogatories sustained.

December 11. Filed libelant's amended answers to interrogatories propounded by respondent.

1921.

March 23. Filed deposition of O. Hegdale, a witness on behalf of libelant.

June 23. This cause this day came on for hearing; Hon. M. T. Dooling, Judge; and after hearing was ordered submitted.

27. Filed exhibit (copy of letter and telegram) with stipulation pertaining thereto attached.

August 2. Filed testimony taken in open court.

1922.

March 6. Filed opinion. Ordered decree entered in favor of respondent.

11. Filed final decree.

May 25. Filed notice of appeal.
 Filed cost bond on appeal (\$500.-
 00) with Fidelity & Deposit Co.
 of Maryland as surety.

June 15. Filed assignment of errors. [5]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

IN ADMIRALTY.

WILLAMETTE NAVIGATION CO., a Cor-
poration,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Cor-
poration,

Respondent.

(Libel.)

To the Honorable Judges of the District Court of
the United States, in and for the Northern
District of California:

The libel of the above-named libelant against the
above-named respondent in a cause of contract of
insurance, civil and maritime, alleges:

I.

That at all of the times hereinafter mentioned the
libelant above named was, and still is, a corporation
duly formed, organized and existing under and by
virtue of the laws of the State of Oregon.

II.

That at all of the times hereinafter mentioned the respondent above named was, and still is, a corporation duly formed, organized and existing under and by virtue of the laws of the State of Connecticut, and doing business at San Francisco and elsewhere as an insurer against maritime losses.

[6]

III.

That on the 20th day of May, 1912, said respondent, for a consideration of Fifteen Hundred (\$1500) Dollars, paid by said libelant to it, issued and delivered to said libelant, loss, if any, payable to assured, its policy of insurance, whereby it insured said libelant to the amount of Twenty Thousand (20,000) Dollars on paper in rolls, and/or bundles, and/or packages while on board S. S. "Ruth" for a term commencing upon the 10th day of May, 1912, at noon to the 10th day of May, 1913, at noon. That by the terms of said policy of insurance, a copy of which is hereto attached, marked Exhibit "A," which is hereby specifically referred to and made a part hereof, it was agreed between the parties thereto that said paper thereby insured was to include salvage charges.

IV.

After said policy had attached and while the same was in force, certain paper in rolls, insured in said policy, was, by the perils insured against, damaged to the amount of Five Thousand One Hundred Fifty-three and 20/100 Dollars (\$5153.30), and certain other paper in rolls insured in said

policy was saved by said insured at an expense to it for salvage charges of the sum of Four Hundred Sixty-eight and 65/100 Dollars (\$468.65), which said last mentioned sum said insured paid for said salvage; that no part or portion of said sums have ever been paid.

V.

The libelant to whom the said policy was by its terms made payable in case of loss, has kept and performed all of the conditions in said policy named upon its part to be kept and performed, and made proofs of said loss and said salvage [7] charges, and requested the respondent to pay the same, but the respondent has refused and does still refuse to pay the same, or any part or portion thereof.

WHEREFORE, libelant prays that a monition, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against said respondent and that said respondent may be required to answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment to the libelant of said sums totalling Five Thousand Six Hundred Twenty-one and 85/100 Dollars (\$5621.85), with costs and interest, and that the libelant may have such other and further relief as in law and justice it may be entitled to receive.

WILLAMETTE NAVIGATION CO.,

By F. G. WIGHT.

IRA S. LILLICK,

Proctor for Libelant.

United States of America,
Northern District of California,—ss.

Subscribed and sworn to before me this 5th day
of January, 1914.

[Seal]

C. W. CALBREATH,
Deputy Clerk, United States District Court, North-
ern District of California. [8]

Exhibit "A."

No. 304

CARGO

HARTFORD FIRE INSURANCE CO.

Hartford, Connecticut.

BY THIS POLICY OF INSURANCE.

| | |
|--------------------------|--|
| Sum | In Consideration of Fifteen Hundred |
| Insured— | ($\$1500.00$) DOLLARS, DOES INSURE |
| $\$20,000.$ | |
| Rate— | Willamette Navigation Co., a Corpora- |
| $7\frac{1}{2}$ per cent. | tion, for account of themselves, loss, if |
| Premium— | any, payable to assured to the amount |
| $\$1500.$ | of Twenty Thousand ($\$20,000.00$) Dollars |
| Particular | |
| average— | |
| 5%. | |

On paper in rolls and/or bundles, and/or pack-
ages and on merchandise and/or supplies.

While on board S. S. "Ruth" and/or "N. R.
Lang."

At and from Oregon City, Oregon, to ports and
places in the Willamette and/or Columbia Rivers
and tributaries, and from Portland, Oregon, and
ports and places in the Willamette and/or Columbia
Rivers and tributaries to Oregon City, Oregon,
direct or via ports and places. Warranted not to
use ports and places below Astoria or above Cas-

cade Locks on the Columbia River or above Pulp Siding on the Willamette River.

This policy also covers property while contained on Ainsworth Dock in the City of Portland, Oregon, for a period of twenty-four hours after discharge from vessel, free from average.

This Company under the terms and conditions of this policy is not liable in case of total, or partial loss, or both combined, of any one cargo while on board steamers "Ruth" and/or "N. R. Lang" going down the Willamette or Columbia Rivers for an amount in excess of \$8000 and going up the Willamette or Columbia Rivers in an amount in excess of \$2000.

Warranted free from particular average under five per cent (5%), but to include salvage and general average charges.

Attached to and forming part of Cargo Policy #304 issued through the Marine & Transportation Department of the Hartford Fire Insurance Company, Hartford, Connecticut, but not valid unless countersigned by HENRY HEWETT & COMPANY, Agents, Portland, Oregon. [9]

upon all kinds of lawful goods and merchandise (petroleum excepted) laden on board the good steamer called the "Ruth" and/or "N. R. Lang," between Oregon City, Ore., to Portland, Ore., and/or Pulp Siding to Oregon City, Ore., at and from May 10th, 1912, at noon, to May 10th, 1913, at noon when this policy shall cease and expire, unless sooner terminated or made void by the conditions hereinafter expressed, the property insured

being warranted in a place of safety at the commencement of the risk.

TOUCHING the adventures and perils which the said company is contented to bear and take upon itself, they are of the sea, rivers, canals, railroads, fires, jettisons, and all other perils or misfortunes that have or shall come to the hurt, detriment, or damage of the said property, or any part thereof, excepting all perils, losses, or misfortunes arising from the want of ordinary care and skill in loading and stowing the cargo of, or in navigating the said said vessel, from theft, barratry, or robbery, or other legally excluded causes. And in case of loss or misfortune, it shall be lawful and necessary to and for the insured, or insurer, their agents, factors, servants, and assigns, to sue, labor, and travel for, in, and about the defence, safeguard, and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment, nor as affirming or denying any liability under this policy, but such acts shall be considered as done for the benefit of all concerned, without prejudice to the rights of either party; to the charges [10] whereof the said company will contribute in such proportion as the sum herein insured bears to the whole value of the property so insured.

IT IS WARRANTED by the insured, free from any claim for loss or damage arising from seizure,

detention, or the consequences of any hostile act of the United States government; or of the people of any seceding or revolting State of this Union; or from the acts of parties sympathizing with or acting for or with such States, or the inhabitants thereof; and also from any loss or damage from piracy or letter of marque, or of the acts of any government hostile to the United States.

IT IS WARRANTED by the insured free from damage or injury, from dampness, or frost, heating, sweating, steaming, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual water contact with the articles damaged, and to be free from liability for leakage, on molasses, or other liquids, or breakage of articles liable to break from their own nature, unless occasioned by the perils insured against.

IT IS UNDERSTOOD AND EXPRESSLY AGREED that this policy does not cover any damage from ice.

Specie, bullion, jewels, bank notes or bills of exchange, deeds, bonds, mortgages, accounts, and all other evidence of debt; plate, metals, paintings, powder, pianofortes, statuary, sculptures, and curiosities, are not deemed to be included in any insurance, unless specially mentioned in the policy and scheduled.

AND IN CASE OF LOSS, such loss to be paid thirty days after proof of loss, and proof of interest in said property, are furnished this company, provided always, and it is hereby further agreed, that if the said insured shall have made any other

insurance upon the property aforesaid, prior in date to this policy, then the said company shall be answerable only for so much as the amount of such prior insurance may be deficient toward fully covering the property hereby insured; and the said company shall return the premium upon so much of the sum by it insured as it shall be by such prior insurance exonerated from. And in case of any insurance upon the said property, subsequent in date to this policy, the said company shall nevertheless be answerable for the full extent of the sum by it subscribed hereto, without right to claim contribution from such subsequent insurers, and shall accordingly be entitled to retain the premium by it received, in the same manner as if no subsequent insurance had been made. And in case of loss or damage to property hereby insured, this company, its agent, or representative, at or nearest the first port of discharge, shall have prompt notice of same, and shall have every opportunity and facility for ascertaining the cause, extent, and amount of damage, by personal inspection, appraisal, or sale of the damaged property. It is also agreed that the property be warranted by the insured free from any charge, damage, or loss, which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

IT IS FURTHERMORE HEREBY EXPRESSLY PROVIDED that no suit or action against this company, for the recovery of any

claim for loss or damage upon, under, or by virtue of this policy, shall be sustained in any court of law or equity, unless such suit or action shall be commenced within the term of twenty-four months next after the loss or damage shall occur, and in case any suit or action shall be commenced after the expiration of twenty-four months next after such loss or damage has occurred, the lapse of time shall be taken and deemed as conclusive evidence and a conclusive defence against the validity of the claim thereby so attempted to be enforced, and the liability of this company for all losses during the continuance of this policy shall not in the aggregate exceed the sum hereby insured. [11]

IMMEDIATE NOTICE OF THE OCCURRENCE of all losses shall be given to this company by the insured; and within thirty days from the time the same may happen, the said insured shall deliver to said company as particular an account thereof as the nature of the case will admit, stating the causes, if known, the extent thereof, and the nature of the interest of insured in the property, also what other insurance or insurances (if any) there was on said property at the time of said loss, which statement shall be in writing, signed by the insured, and verified by his or their oath; and so much of said statement as relates to the cause, nature, and extent of said loss or damage shall be verified also by the oath of the master of said boat or vessel, or of some other person or persons having immediate charge thereof at the time the same did happen, otherwise this com-

pany will not be liable under this policy; and the amount of loss shall be ascertained by the opening of packages, when necessary, by a competent person, and separating the sound from the damaged portion, this company being liable for the loss on the damaged portion only, which shall be ascertained by appraisement by disinterested persons, or by sale at auction as this company may prefer.

THE SAID LOSS OR DAMAGE to be estimated according to the true and actual cash value of the said property at the place of destination on the day of the disaster; and on the property not forwarded to its destination, the said loss or damage to be ascertained in the same manner, and the freight from the place of disaster to the place of destination deducted, and this company will be liable for such proportion of the whole loss as the amount hereby insured bears to the sound value of property so insured. ~~In all cases of loss or damage there shall be deducted, in lieu of average, the sum of \$200. Dollars.~~

IN CASE OF LOSS, all unpaid premiums shall be deducted.

IT IS ALSO UNDERSTOOD AND AGREED that, in case of loss or damage under this policy, the insured, in accepting payment therefor, hereby and by that act assigns and transfers to this company all his or their right to claim for loss or damage, as against the CARRIER, OR OTHER PERSON OR PERSONS, to inure to its benefit, however, to the extent only of the amount of the

loss or damage and attendant expenses of recovery, paid or incurred by the said company; and any act of the insured, waiving or transferring, or tending to defeat or decrease, any such claim against the carrier, or such other person or persons, whether before or after the insurance was made under the policy, shall be a cancellation of the liability of this company, for or on account of the risk insured for which loss is claimed.

AND IT IS UNDERSTOOD AND AGREED that this company or its agent shall have free access at all reasonable hours to the books, accounts, instructions, and correspondence of the insured, containing statements of, or which relate to, shipments and receipts covered by this policy.

This policy shall be canceled at any time at the request of the insured or by the company by giving fifteen days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy, this company retaining the customary short rate, except that when this policy is canceled at the instance of this company it shall retain only the pro rata premium.

THE ASSURED AGREES that any broker, person, firm, or corporation, other than an agent of this company duly commissioned in writing under its corporate seal, who shall have procured [12] this insurance to be taken by this company, shall be deemed to be exclusively the agent of the assured in any and all transactions and representa-

tions relating to this insurance, and that any brokerage on or rebate from the premium or consideration named herein that may be paid or allowed to such broker, person, firm, or corporation, is to be considered as paid or allowed to the assured.

N. B.—This policy is subject to the usages and regulations of the Port of New York on all matters of adjustment and settlement of losses not herein otherwise clearly specified and provided for, to be stated by a competent adjustment of marine losses, designated by the insurers.

IN WITNESS WHEREOF, this company has executed and attested these presents, this 20th day of May, 1912. This policy shall not be valid until countersigned by the duly authorized manager or agent of the company at Portland, Ore.

FRED'K SAMSON,
Secretary.

CHAS. E. CHASE,
President.

Countersigned by HENRY HEWETT & CO.
Agents.

[Endorsed]: Filed Jan. 5, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [13]

In the District Court of the United States, for the
Northern District of California, First Division.

IN ADMIRALTY—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corporation,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corporation,

Respondent.

(Second Amended Libel.)

To the Honorable Judges of the District Court of
the United States, in and for the Northern District
of California:

The second amended libel of the above-named
libelant against the above-named respondent, in a
cause of contract of insurance, civil and maritime,
alleges:

I.

That at all of the times hereinafter mentioned
the libelant above named was, and still is, a corporation
duly formed, organized and existing under and by virtue
of the laws of the State of Oregon.

II.

That libelant is informed and believes, and upon
such information and belief alleges, that at all of
the times hereinafter mentioned the respondent
above named was, and still is, a corporation duly
formed, organized and existing under and by virtue

of the laws of the State of Connecticut, and doing business at San Francisco, and elsewhere, as an insurer against maritime losses. [14]

III.

That on the 20th day of May, 1912, said respondent, for a consideration of Fifteen Hundred (1500) Dollars, paid by said libelant to it, issued and delivered to said libelant, loss, if any, payable to assured, its policy of insurance, whereby it insured said libelant to the amount of Twenty Thousand (20,000) Dollars on paper in rolls, and/or bundles, and/or packages, while on board S. S. "Ruth," for a term commencing upon the 10th day of May, 1912, at noon to the 10th day of May, 1913 at noon; that by the terms of said policy of insurance, a copy of which is hereto attached, marked Exhibit "A," which is hereby specifically referred to and made a part hereof, it was agreed between the parties thereto that said paper thereby insured was to include salvage charges.

IV.

That on or about, to wit, the 11th day of January, 1913, certain paper, in rolls, was placed in the custody and care of the libelant herein, at the Port of Oregon City, Oregon, and libelant agreed to deliver the same by the S. S. "Ruth" in good order and condition at the Port of Portland, Oregon.

V.

That after said policy had attached, on or about, to wit, the 11th day of January, 1913, the said S. S. "Ruth," with said paper in rolls on board, set sail upon a voyage from said Port of Oregon

City, Oregon, to said Port of Portland, and during the course thereof, and while said paper in rolls was on board said S. S. "Ruth" and said policy was still in force, the said steamer stranded and sunk in the Willamette River, near the Port of Gladstone, Oregon; that by reason of said stranding and sinking a part of said paper in rolls insured in said policy was damaged to the amount of Five Thousand One Hundred Fifty-three [15] and 20/100 Dollars (\$5153.20), and certain other of said paper in rolls insured in said policy was saved out of said disaster by said insured at an expense to it for salvage charges of the sum of Four Hundred Sixty-eight and 65/100 Dollars (\$468.65), which said last mentioned sum said insured paid for said salvage; that no part, or portion, of said sums has been paid.

VI.

That the libelant, to whom the said policy was by its terms made payable in case of loss, has kept and performed all of the conditions of said policy named upon its part to be kept and performed, and made proofs of said loss and said salvage charges, and requested the respondent to pay the same, but the respondent has not paid, and refuses to pay, the same, or any part or portion thereof.

WHEREFORE, the libelant prays that a monition, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against said respondent and that said respondent may be required to answer all and singular the matters aforesaid, and that

this Honorable Court would be pleased to decree the payment to the libelant of said sums, totalling Five Thousand Six Hundred Twenty-one and 85/100 Dollars (\$5621.85), with costs and interest, and that the libelant may have such other and further relief as in law and justice it may be entitled to receive.

WILLAMETTE NAVIGATION CO.

By F. G. WIGHT.

IRA S. LILLICK,

Proctor for Libelant. [16]

State and Northern District of California,
City and County of San Francisco,—ss.

F. G. Wight, being first duly sworn, deposes and says, that he is an officer of the Willamette Navigation Co., a corporation, to wit, the agent thereof; that as such he has authority to execute this verification; that he has read the foregoing second amended libel and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and, as to those matters, he believes it to be true.

F. G. WIGHT.

Subscribed and sworn to before me this 14th day of June, A. D. 1915.

[Seal]

M. V. COLLINS,

Notary Public, in and for the City and County of
San Francisco, State of California.

It is hereby stipulated and agreed that libelant may file the within and foregoing second amended

libel, and it is further stipulated that the copy of the insurance policy attached to the first amended libel may be deemed to be attached hereto.

IRA S. LILLICK,

Proctor for Libelant.

ANDROS & HENGSTLER,

COOGAN & O'CONNOR,

Proctor for Respondent.

[Endorsed]: Filed Jun. 16, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [17]

In the District Court of the United States, in and
for the Northern District of California, First
Division.

IN ADMIRALTY—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corpora-
tion,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corpora-
tion,

Defendant.

Exceptions to Second Amended Libel.

To the Honorable MAURICE T. DOOLING, Judge
of said Court:

The exceptions of respondent to the second
amended libel in the above-named cause allege:

I.

That said second amended libel does not state

facts sufficient to constitute a cause of action in this: that it does not appear therein that libelant had any insurable or other interest in said goods at the inception of the risk or risks insured against.

II.

That said second amended libel does not state facts sufficient to constitute a cause of action in this, to wit: that it does not appear therein that libelant had any insurable or other interest in said goods at the time of the alleged loss.

III.

That said second amended libel is uncertain in this, to wit: that it cannot be ascertained therefrom what, if any, insurable or other interest libelant had in said goods at the inception [18] of the risk or risks insured against; and it cannot be ascertained therefrom what, if any, insurable or other interest libelant had in said goods at the time of the alleged loss.

IV.

That said second amended libel does not state facts sufficient to constitute a cause of action in this, to wit: that it does not appear therein that libelant was in any way damaged by the alleged loss of said goods.

V.

Said second amended libel is uncertain in this, to wit: That it cannot be ascertained therefrom what, if any, damage said libelant sustained by reason of the alleged loss of said goods, nor can it be ascertained therefrom how said libelant was

in any way damaged by such alleged loss of said goods.

WHEREFORE, respondent prays that said Second Amended Libel be dismissed with costs.

ANDROS & HENGSTLER,
GOLDEN W. BELL,

Proctors for Respondent.

[Endorsed]: Due service and receipt of a copy of the within is hereby admitted this 27 day of Dec. 1915.

IRA S. LILLICK,
J. A. O.

Filed Dec. 29, 1915. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [19]

In the District Court of the United States, in and
for the Northern District of California, First
Division.

IN ADMIRALTY—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corpora-
tion,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corpora-
tion,

Respondent.

IRA S. LILLICK, Esq., Proctor for Libelant.
ANDROS & HENGSTLER and G. W. BELL, Esq.,
Proctors for Respondent.

(Order Overruling Exceptions to Second Amended Libel.)

The exceptions to the second amended libel are overruled and respondent allowed ten days in which to answer.

January 27th, 1916.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jan. 27, 1916. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [20]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corporation,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corporation,

Respondent.

Answer to Libel.

To the Honorable M. T. DOOLING, Judge of the District Court of the United States, for the Northern District of California:

Now comes the respondent herein, and answering the amended libel of the libelant, admits, denies and alleges as follows, to wit:

I.

Alleges that it has not sufficient information or belief either to admit or deny the allegations contained in Article I of said amended libel, and therefore it demands proof thereof.

II.

Admits the allegations contained in Article II of said amended libel.

III.

Admits that on or about the 20th day of May, 1912, respondent, for a consideration of Fifteen Hundred Dollars (\$1500), paid by libelant to it, insured and delivered to libelant a policy of insurance, numbered 304, to wit, the original of which Exhibit "A" attached to said amended libel purports to be a copy, whereby respondent insured libelant to the amount of Twenty Thousand Dollars (\$20,000) on paper in rolls and/or bundles and/or packages, while on board the S. S. "Ruth," for the term, between the places and [21] subject to all of the terms of conditions set forth in said original policy numbered 304, and not otherwise.

IV.

Denies that no part or portion of the sums mentioned in Article IV of said amended libel has ever been paid by respondent, but admits that respondent has not paid the whole thereof; and as to whether the whole or any part thereof has been paid to libelant by other parties, respondent is ignorant, and calls for proof thereof; as to the other allegations contained in Article IV of said amended libel, alleges that it has not information or knowl-

edge sufficient either to admit or deny the same, and therefore respondent calls for full and strict proof of each and every one of such allegations.

V.

Denies that libelant has kept and performed or kept or performed all of the conditions in said policy named upon its part to be kept and performed or kept or performed; denies that libelant made proofs of said alleged loss and said alleged salvage charges or said alleged salvage charges, as required by the terms and conditions of said policy of insurance; admits that libelant requested respondent to pay the alleged loss and salvage charges, and that respondent has refused and continues to refuse to pay the whole thereof, but denies that respondent refused to pay any part thereof, and in this behalf respondent alleges that on or about the 24th day of April, 1913, it paid to libelant the sum of Eleven Hundred Fifty-eight Dollars and Eighty Cents (\$1158.80) in full satisfaction and compromise of all claims and demands against respondent for loss or damage by the stranding of the steamer "Ruth," which occurred on the 11th day of January, 1913, to the property described in said policy numbered 304, which stranding is that referred to in Article IV of the amended libel, and that therefore, and in consideration thereof, libelant executed and delivered to respondent a voucher and satisfaction in full, in the following words and figures, to wit:

[22]

“Marine and Transportation Department,
The Hartford Fire Insurance Company,
Hartford, Conn.

April 24th, 1913.

Received of The Hartford Fire Insurance Company, through Palache & Hewitt, Genl. Agents at San Francisco, the sum of eleven hundred fifty-eight & 80/100 dollars, being in full satisfaction and compromise settlement of all claims and demands against the said Company for loss or damage by stranding Str. Ruth, which occurred on the 11th day of January, 1913, to the property described under cargo policy No. 304 of said company

\$1158.80:

WILLAMETTE NAVIGATION COMPANY,

By OSCAR SUTRO.”

For a further and separate affirmative defense respondent alleges that on or about the 24th day of April, 1913, it paid to libelant the sum of Eleven Hundred Fifty-eight Dollars and Eighty Cents (\$1158.80) in full accord and satisfaction and compromise of all claims and demands whatsoever against respondent for loss or damage by the stranding of the steamer “Ruth,” referred to in Article IV of the amended libel, to the property described in said policy numbered 304, and said libelant accepted said sum of Eleven Hundred Fifty-eight Dollars and Eighty Cents (\$1158.80) in full accord and satisfaction and compromise of all claims and demands against respondent for said loss and damage under said policy numbered 304, and executed

and delivered to respondent a receipt, satisfaction and release in the words and figures above set forth. [23]

For a further second and separate affirmative defense respondent alleges:

That libelant is a common carrier of property and merchandise, and its sole interest in the merchandise and property referred to in the amended libel herein was and is that of a common carrier of such property for hire; that libelant received said property from divers shippers for the purpose of carrying the same on said steamer "Ruth" for hire, and that libelant received said property under and agreed to carry the same by virtue of certain bills of lading issued by libelant to said divers shippers, and subject to the terms and conditions of said bills of lading, and not otherwise; that the sole interest of libelant in said property was and is as a common carrier under said bills of lading.

That said bills of lading contained, among others, the following condition agreed to by libelant and said divers shippers:

"If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from perils of the lakes, sea or other

waters; or from explosion, bursting of boilers, breaking of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage.”

That the loss and damage referred to in the amended libel herein occurred by a peril of the river, stranding of said steamer [24] “Ruth,” and that libelant was and is not in any wise responsible or liable therefor, by virtue of said above conditions and the limitations and exemptions by statute, therein referred to and particularly by virtue of the Harter Act; that libelant suffered and sustained no loss by virtue of the damage to or loss of said property, and will not hereafter sustain any loss thereby; that libelant had no insurable interest in said property as against the contingency aforesaid.

For a further third and separate affirmative defense respondent alleges:

That it is provided in the policy of insurance referred to in said amended libel, among other things, that “if the said insured shall have made any other insurance upon the property aforesaid, prior to the date of this policy, then the said company shall be answerable only for so much as the amount of such prior insurance may be deficient toward fully covering the property hereby insured”; that, according to the information and belief of respondent, said libelant had made other insurance upon the property aforesaid, prior to the date of said policy in the amended libel referred to, and said prior in-

insurance was not to any amount deficient toward fully covering the property insured by the policy referred to in the amended libel herein.

For a further fourth and separate affirmative defense respondent alleges:

That said steamer "Ruth" was unseaworthy when said property was placed on board of her and the insurance in said amended libel referred to never attached or became effective and said unseaworthiness was the proximate and efficient cause of the alleged damage and loss of said property. [25]

For a further fifth and separate defense respondent alleges:

That no proofs of the alleged loss of and damage to said property were presented or made within the time required and specified in said policy of insurance referred to in said amended libel.

For a further sixth and separate affirmative defense respondent alleges:

That the bills of lading under and by virtue of which libelant received said property as a common carrier, contained, among others, the following provision:

"Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance."

That respondent is unable to state whether or not libelant has received the full benefit of any other

such insurance, and if so in what amount, and therefore respondent calls for full proofs in the premises, and prays that any such insurance received by libelant be offset against any claim upon respondent.

WHEREFORE respondent prays that the amended libel herein be dismissed with costs to respondent, and further that libelant be required to answer on oath the interrogatories hereunto annexed.

ANDROS & HENGSTLER,
GOLDEN W. BELL,
Proctors for Respondent. [26]

State of California,
City and County of San Francisco,—ss.

Adam Gilliland, being first duly sworn, deposes and says that he is an officer of the respondent herein, to wit, that Assistant Gen'l Agent thereof; that he has read the foregoing answer and knows the contents thereof and the same is true of his own knowledge, except as to those matters therein stated to be upon information and belief, and as to those he believes it to be true.

ADAM GILLILAND.

Subscribed and sworn to before me this 11th day, of October, 1916.

[Seal]

JAMES MASON.
Notary Public. [27]

Interrogatories (Propounded to Libelant).

1. Was and is not the only interest which libelant ever had in the property referred to in the libel that of a common carrier for hire?

2. If libelant ever had or has any other interest in said property state fully the nature of such interest.

3. Was the libelant ever the owner of any of the property referred to in the libel?

4. Is it not true that all of the bills of lading, under which libelant received the property referred to in the libel from the shippers thereof, contained the provision set out in the second affirmative defense in the answer to the amended libel?

5. Is it not true that all of the bills of lading under which libelant received the property referred to in the libel from the shippers thereof, contained the provision set out in the sixth affirmative defense in the answer to the amended libel?

6. Is it not a fact that the libelant had a policy in another company fully covering the property referred to in the amended libel, dated January 25th, 1906?

7. Is it not a fact that libelant collected from another insurance company the full amount for which this action was filed?

8. What amount or amounts has libelant received from other insurance companies for any loss or damage to the property referred to in the libel?

9. Name such company or companies, state when each amount was received from it or them and what each of such amounts was.

10. Has libelant ever paid any amount or amounts to any [28] shipper or shippers of the property referred to in the amended libel herein by

reason of any loss or damage to such property, and if so what amounts and when?

11. Has libelant ever agreed to make any such payments, and if so what amounts and when?

12. Is it not a fact that the "Ruth" was beached in order to prevent her from sinking in deep water from leakage?

ANDROS & HENGSTLER,
GOLDEN W. BELL,
Proctors for Respondent.

[Endorsed]: Due service and receipt of a copy of the within answer is hereby admitted this 11th day of October, 1916.

IRA S. LILLICK,
——— for Libelant.

Filed Oct. 13, 1916. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [29]

In the District Court of the United States, in and
for the Northern District of California, First
Division.

IN ADMIRALTY—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corpora-
tion,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corpora-
tion,

Respondent.

Answer to Interrogatories Propounded by Respondent.

Now comes libelant, and, answering the interrogatories propounded by respondent, makes the following replies:

To Interrogatory No. 1: Yes, so far as libelant is at present advised.

To Interrogatory No. 2: None, so far as libelant is at present advised.

To Interrogatory No. 3: No.

To Interrogatory No. 4: Yes.

To Interrogatory No. 5: Yes.

To Interrogatory No. 6: No.

To Interrogatory No. 7: No.

To Interrogatory No. 8: None.

To Interrogatory No. 9: Answered by previous answer.

To Interrogatory No. 10: No.

To Interrogatory No. 11: No.

To Interrogatory No. 12: No. The libelant has been informed that the steamer "Ruth" struck the bottom, and was beached [30] to prevent her sinking in deep water.

WILLAMETTE NAVIGATION CO.,

By (Signed) F. G. WIGHT,

Agent.

Northern District of California,
City and County of San Francisco,—ss.

F. G. Wight, being first duly sworn, deposes and says, that he is an officer, to wit, the agent of the Willamette Navigation Co.; that as such officer

he has authority to execute this verification; that he has read the foregoing answers to the interrogatories propounded by respondent, and knows the contents thereof, and that the same are true of his own knowledge, except as to those matters therein stated on information, or belief, and that, as to those matters, he believes it to be true.

(Signed) F. G. WIGHT.

Subscribed and sworn to before me this 22d day of September, A. D. 1918.

[Seal] (Signed) H. L. LANFAR,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Receipt of a copy of the within is hereby admitted this 24th day of Sept. 1919.

ANDROS & HENGSTLER,
Proctors for Respondent.

Filed Sep. 26, 1919. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [31]

In the District Court of the United States, for the
Northern District of California, First Division.

IN ADMIRALTY—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corpora-
tion,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corpora-
tion,

Respondent.

Exceptions to Libelant's Answers to Respondent's Interrogatories.

1. Said answers are insufficient in that it does not appear that they are the personal answers of the libelant as required by Rule 32 of the Admiralty Rules.

2. Said answers are insufficient in that it appears that they are not the personal answers of the libelant as required by Rule 32 of the Admiralty Rules.

ANDROS & HENGSTLER,
Proctors for Respondent.

[Endorsed]: Due service and receipt of a copy of the within Exceptions, etc., is hereby admitted this 29th day of Sept. 1919.

IRA S. LILLICK,
Proctor for Libelant.

Filed Sep. 30, 1919. W. B. Maling, Clerk.
By C. W. Calbreath, Deputy Clerk. [32]

In the District Court of the United States, in and
for the Northern District of California, First
Division.

IN ADMIRALTY—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corpora-
tion,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corpo-
ration,

Respondent.

(Amended) Answers to Interrogatories Propounded by Respondent.

Now comes libelant, and, answering the interrogatories propounded by respondent, makes the following replies:

To Interrogatory No. 1: Yes, so far as libelant is at present advised.

To Interrogatory No. 2: None, so far as libelant is at present advised.

To Interrogatory No. 3: No.

To Interrogatory No. 4: Yes.

To Interrogatory No. 5: Yes.

To Interrogatory No. 6: No.

To Interrogatory No. 7: No.

To Interrogatory No. 8: None.

To Interrogatory No. 9: Answered by previous answer.

To Interrogatory No. 10: No.

To Interrogatory No. 11: No.

To Interrogatory No. 12: No. The libelant has been [33] informed that the steamer "Ruth" struck the bottom, and was beached to prevent her sinking in deep water.

WILLAMETTE NAVIGATION CO.

By B. T. McVAIN,
Secretary.

County of Multnomah,
City of Portland,
State of Oregon,—ss.

B. T. McVain being first duly sworn, deposes and says: That he is an officer, to wit, the secre-

tary, of the Willamette Navigation Co.; that as such officer he has authority to execute this verification; that he has read the foregoing answers to the interrogatories propounded by respondent, and knows the contents thereof, and that the same are true of his own knowledge, except as to those matters therein stated on information or belief, and, that, as to those matters, he believes it to be true.

B. T. McVAIN.

Subscribed and sworn to before me this 4th day of December, A. D. 1919.

[Seal]

MARY J. SMYTH,

Notary Public, in and for the City of Portland,
County of Multnomah, State of Oregon.

My commission expires Feb. 16, 1921.

[Endorsed]: Due service and receipt of a copy of the within amended answers, etc. is hereby admitted this 10th day of December, 1919.

ANDROS & HENGSTLER.

By JOHN E. MANDERS,

Proctors for Respondent.

Filed Dec. 11, 1919. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [34]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,514—IN ADMIRALTY.

WILLAMETTE NAVIGATION COMPANY, a
Corporation,
Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corporation,
Respondent.

**Deposition of Olaf Hegdale, Taken in Behalf of
Libelant. [35]**

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,514.—IN ADMIRALTY.

WILLAMETTE NAVIGATION CO., a Corporation,
Libellant,

vs.

HARTFORD FIRE INSURANCE CO., a Corporation,
Respondent.

IT IS HEREBY STIPULATED and agreed by and between the parties herein that the deposition of Olaf F. Hegdale, a witness to be produced, sworn

and examined on behalf of libelant, may be taken before Alva W. Person, a notary public, on the 9th day of March, 1921, or on such subsequent date as may be agreed upon by counsel for said parties at Portland, Oregon, and said deposition may be taken upon interrogatories to be propounded to said witness orally before said Alva W. Person, or any notary public in said City of Portland, State of Oregon, at the offices of Messrs. Platt, Platt, Montgomery & Fales, Room No. 619 Platt Building, Portland, Oregon.

IT IS FURTHER STIPULATED that the deposition so taken under this stipulation, when written up, may be read in evidence by either of the parties to the above-entitled action on the trial of the case and that all objections as to the form of questions are waived, unless objected to at the time of taking said deposition and that all objections as to materiality and competency of the testimony are reserved to all parties. [36]

IT IS FURTHER STIPULATED that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.

Dated: San Francisco, California, January 26th, 1921.

IRA S. LILLICK,
HUGH MONTGOMERY,
Attorney for Libelant,
ANDROS & HENGSTLER,
ERSKINE WOOD,
Attorneys for Respondent. [37]

In the Southern Division of the United States
District Court, for the Northern District of
California, First Division.

No. 15,514.—IN ADMIRALTY.

WILLAMETTE NAVIGATION COMPANY,
a Corporation,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corpo-
ration,

Respondent.

DEPOSITION OF OLAF F. HEGDALE, FOR
LIBELANT.

Deposition of Olaf F. Hegdale, a witness pro-
duced on behalf of the libelant in the above-entitled
cause, taken pursuant to stipulation hereto at-
tached, duly signed by the proctors for the respec-
tive parties, before Alva W. Person, a notary
public for Oregon, at the office of Messrs. Platt,
Platt, Montgomery & Fales, Room 619 Platt Build-
ing, Portland Oregon, on the 9th day of March,
1921, beginning at the hour of eleven o'clock in the
forenoon.

PRESENT:

Mr. HUGH MONTGOMERY, of Proctors for
the Libelant.

Mr. ERSKINE WOOD, of Proctors for the
Respondent.

(Deposition of Olaf F. Hegdale.)

Thereupon the witness, OLAF F. HEGDALE, was sworn to tell the truth, the whole truth and nothing but the truth, and was examined and testified as follows:

Direct Examination by Mr. MONTGOMERY.

Q. Now Captain, in what line of business are you at present [38] engaged?

A. Steamboating; master and pilot on river steamers.

Q. How long have you been engaged in that line of activity, Captain? A. As master and pilot?

Q. Yes. A. Approximately twenty years.

Q. In what locality, if any, or what localities?

A. I have steamboated on the Columbia and Willamette rivers.

Q. Between what ports?

A. Portland and Astoria, Portland and The Dalles, and Portland and Oregon City, and upper river points.

Q. Now, were you in the month of January, 1913, the master of the steamship "Ruth," which was then operating on the Willamette River?

A. I was.

Q. Between what ports was she operating at that particular time?

A. Oregon City and Portland.

Q. Were you the master of the steamship "Ruth" on the 11th day of January, 1913? A. I was.

Q. Between what ports was she operating on that particular date?

A. Oregon City and Portland.

(Deposition of Olaf F. Hegdale.)

Q. State the facts, if you can, as to the condition of the steamer "Ruth" on the 11th day of January, 1913, and immediately prior thereto, with reference to her seaworthiness.

A. The steamer on that date was in as good a condition as she was the day she was inspected and passed by the United States Inspectors. I inspected her at frequent intervals between that and the time of the stranding. I found no defects in [39] her. She was just as good, to my knowledge—to the best of my knowledge—on that day as she was when she was inspected.

Q. To what extent had you gone in making an inspection of the vessel on that date and immediately prior thereto? —

A. Well, immediately prior at regular intervals I would go through the hold and see if everything was all right, inspect all other parts of her, equipments, hull, cabins and everything, to see that they were in good condition.

Q. Now, do you recall the accident, or the occasion of the accident to the steamship "Ruth" on or about the 11th day of January, 1913, on the Willamette River at approximately the point where the Clackamas River meets the Willamette River?

A. Do I recall the incident?

Q. Yes. A. I do.

Q. Were you master of the vessel at that time?

A. I was.

Q. Now, based upon your experience in steamboating, and particularly your experience upon

(Deposition of Olaf F. Hegdale.)

the Willamette and Columbia rivers, state whether or not in your opinion the accident which occurred at that time was in any way traceable to any negligence upon the part of the steamship "Ruth," her crew or the master. A. It was not.

Mr. MONTGOMERY.—I think that is all.

Mr. WOOD.—That is a pure conclusion of law, I think. That is your lookout.

Mr. MONTGOMERY.—You may take the witness.

Cross-examination by Mr. WOOD.

Q. When did the U. S. Inspector last inspect her before the [40] stranding or the accident, whatever it was?

A. I do not remember the exact date of the inspection. She was regularly inspected yearly, regular yearly inspections, but I do not remember the date prior to the stranding.

Q. And their inspections are sometimes rather casual; they are not always absolute proof that the vessel is seaworthy, are they? You don't contend that?

A. I have found them quite to the contrary.

Q. Well, you know that many a vessel has been held in the courts to be unseaworthy after she has been inspected by the inspectors, don't you?

A. No, I do not.

Q. How often did you look over her?

A. How often?

Q. Yes.

A. Oh, sometimes every day and sometimes twice or three times a week I would go through her

(Deposition of Olaf F. Hegdale.)

thoroughly, and have a man go through her very frequently.

Q. Go inside her hull? A. Yes.

Q. Did you yourself go inside her hull?

A. Yes.

Q. How frequently did you do that?

A. Well, I don't know. Probably if everything went wrong, without any trouble and everything was all right, I might go through her one a week.

Q. You say if everything was wrong; you mean if everything was all right?

A. No; I mean if everything was all right, nothing wrong, I would go through her once a week and see that she was all right. [41]

Q. Did you go down through her hold then?

A. I would go through her hull frequently from one end to the other.

Q. With lights? A. I beg pardon?

Q. How did you get into the hull to inspect the inside?

A. We have a light for each department all through the hold. You can see it almost like day. And if you have occasion to go through her in the daytime you use flash-lights; you don't light the lights.

Q. You say that your opinion is that this accident was not due in any way to negligence; what do you base that opinion on?

A. On the perils of the sea.

Q. That is what you base your opinion on?

A. That—just a moment. I didn't get it.

(Deposition of Olaf F. Hegdale.)

Q. You were master of this ship at the time of this accident, weren't you? A. Yes.

Q. You were on her, weren't you? A. Yes.

Q. So to say that there was any negligence would be in effect to accuse yourself, wouldn't it?

A. The question wasn't negligence on my part or the crew or anything; I don't know just what they meant by that. Accusing myself?

Q. Well, I didn't know whether you did or not.

A. How did I answer that?

Q. You said that in your opinion that the accident was in no way due to negligence.

A. I do—I did. [42]

Q. Well, what do you base that opinion on? You gave it as an opinion.

A. Because we was doing all the ordinary, taking all the precautions, seeing that everything was as near right as could be.

Q. What do you mean by all the precautions?

A. Steering the river the same as I always done.

Q. Any other precautions?

A. Any other precautions?

Q. Did you take any other precautions?

A. What do you mean,—in preventing the accident?

Q. Yes.

A. When I found out that she was going to reach the beach most assuredly I done all I possibly could to stop her—stopped and backed full speed.

Q. Did she go toward the beach against your control? A. She did.

(Deposition of Olaf F. Hegdale.)

Q. What did she do? Did she take a shear toward the beach? A. Yes.

Q. What made her do that?

A. The condition of the stream; the swiftness of the current, I presume.

Q. You mean she took a sudden shear toward the beach? A. Yes, sir.

Q. Now what point was that in the river?

A. Just below the intersection of the Clackamas River.

Q. How far from the bank were you when you were navigating the usual channel there?

A. Approximately one hundred fifty feet, maybe two hundred at that point.

Q. What is the water like there? [43]

A. What is the water like?

Q. Yes.

A. I don't quite understand your meaning; what it is like in color?

Q. Still, slack, rapid?

A. Oh; very rapid; very swift at that time.

Q. Was that in the rapids that are just below the mouth of the Clackamas?

A. It was at the high-water channel opposite the rapids, what we call the rapids. There are two channels there; one we use in high water and the other one we use in low water. This was the high water channel. That channel is much straighter and easier to navigate ordinarily.

Q. Which shore do you mean you were one hundred and fifty feet from?

(Deposition of Olaf F. Hegdale.)

A. The east shore of the Willamette River.

Q. And was the vessel in the rapids when she took this sheer? A. She was in the swift current.

Q. Well, you know what is ordinarily understood by the word "rapids" in a river. Was she in rapids as commonly understood, breaking water?

A. Yes, sir. Well, breaking—now, if you will just stop just a minute and not take these notes I will explain to you here and then you will know better without taking the notes.

Mr. WOOD.—I think you had better explain and take the notes; it doesn't make any difference.

Mr. MONTGOMERY.—That is all right; just go ahead.

WITNESS.—Well, the rapids are right there in one sense, but there is no rapids at that stage of the water. The Willamette River was up quite high and there is a straight, or approximately [44] an even current, but it runs very swift all through. There is not the breaking or rolling rapids, but it is a steady running, very swift current, probably between six and eight miles an hour at that stage of water.

Q. Had you navigated the "Ruth" many times through that kind of water in that part of the river?

A. I navigated her about six years prior to that, five or six years, I think, every day, under all conditions.

Q. Did you ever have anything like a sudden sheer before? A. Oh, yes, I have.

(Deposition of Olaf F. Hegdale.)

Q. That put her in toward the shore?

A. Yes, sir.

Q. Did she go on the shore before?

A. No; I managed to stop her, until that time.

Q. Have you any explanation of the sheer at this time?

A. Any explanation for the cause of the sheer?

Q. Yes.

A. Well, only the swift current that the steamer was in, and going between the shore and an island, it was necessary to hold towards the shore to stay in the deep water, and the Clackamas River was very low, practically slack; the Willamette River was quite high; and the Columbia River was also very low, creating an unusually strong current, also current and slack water close to the east shore where she stranded. In order to keep her in the deepest water we had to steer a little to the east shore, and when the vessel was in the deepest water she was laying in the edge of an eddy formed on account of the slack water in the Clackamas. Thereby when we strived to get her back the current was too strong.

Q. When you started to get her to back? [45]

A. Started to come out.

Q. Oh, to swing her bow out?

A. Swing her bow out.

Q. Out in the main river again?

A. In the main river again.

Q. Yes.

A. The current was so swift she would not answer

(Deposition of Olaf F. Hegdale.)

fast enough to make it. She just sheered into the shore. The channel is deep right up through to the shore. You can land it anywhere right at the shore on that side where she hit. In fact, the vessel when she stranded, her stern lay in twenty feet of water and her bow was entirely up on the bank.

Q. And where she commenced to take this sheer was about one hundred and fifty feet from the eastern shore?

A. One hundred and fifty, possibly; between one hundred and fifty and two hundred feet from the shore, yes.

Q. So she ran one hundred and fifty to two hundred feet toward the beach against your control? A. Yes.

Q. That would be on her starboard side as she was coming down the river? A. Starboard side.

Q. On her port side how far was it deep water, on her port side?

A. Well, there is a channel there probably three hundred feet wide, or three hundred fifty at that stage of water. At that stage of water the channel in that vicinity was approximately three hundred feet wide.

Q. That is the navigable channel?

A. Well, in a sense it is navigable, but it shoaled—

Q. (Interrupting.) Well, navigable for your boat, wasn't it? [46]

A. Yes, but it runs to an island and it shoals

(Deposition of Olaf F. Hegdale.)

all the time gradually, gradually all the time out, and the deepest water is next to the east shore.

Q. How much did your boat draw?

A. She draws about five feet of water when she is loaded.

Q. How deep was the water at this deepest point that you were seeking? A. Seeking?

Q. Yes; this deepest point where you were trying to keep her.

A. Why, the shoalest place on the crossing there at that stage was probably ten or eleven feet of water.

Q. And you had on your port side navigable water for your boat for a width of one hundred fifty feet or more?

A. Possibly a hundred feet. She could be navigated probably one hundred feet further.

Q. I thought you said the channel was three hundred feet wide?

A. Well, approximately. I was between one hundred and fifty and two hundred feet from shore, and the channel is approximately between two hundred and fifty and three hundred feet wide at that stage of water that she would not strike.

Q. How big a boat is the "Ruth"?

A. Her tonnage is four hundred and—I have forgotten her gross tonnage. I think it is four hundred and odd tons, I don't know, gross.

Q. How long is she?

A. Her hull is one hundred fifty-six and some tenths.

(Deposition of Olaf F. Hegdale.)

Q. What is her beam?

A. Her beam was thirty-four feet.

Q. What horsepower are her engines?

A. Well, I don't know exactly; approximately four hundred, [47] three hundred and fifty or four hundred.

Q. What sort of steering gear has she?

A. She had hydraulic and hand power auxiliary.

Q. What sort of rudders?

A. What sort of rudders?

Q. Yes.

A. She has the regulation rudders used on river steamers, four mains and two monkeys.

Q. What is her speed when she is full speed in slack water?

A. Oh, that varies according to load; approximately ten miles an hour, I should judge. She is about a ten mile boat.

Q. How long does it take to stop her under these conditions, slack water, going ten miles an hour?

A. Slack water, about six or seven hundred feet.

Q. Bring her to a dead stop in that time—in that distance, I mean?

A. Well, this is in reference to the boat being light. Now there is conditions and a difference when—

Q. (Interrupting.) Now, let's talk about her as she was loaded at this time.

A. At that time I would have to have about eight or nine hundred feet, loaded.

Q. Why, was she loaded heavier than usual?

(Deposition of Olaf F. Hegdale.)

A. No, she wasn't loaded heavier than usual.

Q. What is the ordinary load you carry on her?

A. Somewhere around two hundred tons.

Q. Was that what she had on this day?

A. Two hundred and something, two hundred and a few tons, maybe.

Q. Two hundred and what?

A. Two hundred tons approximately. She might have been a little [48] over. The average load we would run would average about two hundred. She would go up to two hundred thirty, and I think I have had two hundred and forty on her at frequent intervals, but the average load was about two hundred tons.

Q. Well, what is the nearest you can come to stating what she actually had on this time?

A. Well, it is so long ago I don't hardly remember, but I think she had a little over two hundred tons. She might have had two hundred ten or two hundred twelve, something like that. She frequently had two hundred forty tons on her, and she had carried three hundred tons.

Q. You didn't try to beach her at all?

A. Indeed not.

Q. You had no reason for wanting to beach her?

A. No; my only reason was to keep her off of the beach.

Q. Just make a rough drawing there, just a sketch of the Willamette River, showing where the Clackamas comes in.

A. Showing where the Clackamas comes in?

(Deposition of Olaf F. Hegdale.)

Q. Yes. I will illustrate what I mean. What I mean is this: (Proctor here made a rough pencil sketch.) Call that the Willamette; I don't know whether it is straight or crooked; the Clackamas comes in something like that. I am not asking you for a map to scale.

A. How far do you wish to go above, just a little ways?

Q. To this place you are talking about.

A. All right; you want me to draw approximately a rough sketch of the channel where I went, and the river.

Q. Yes; I wanted you to show that second channel you spoke of. A. The second channel?

Q. Yes; you said there were two channels. You said there was [49] a high water channel and another channel.

A. All right. (Witness draws sketch.) There is the approximate lay of the river. Here is the channel that I come down; there is the Clackamas River; here is where she stranded, right about there; this is the other channel that comes around, and they both come together just at the foot of this island.

Q. Oregon City is up here (indicating,) isn't it?

A. Oregon City lays around the turn.

Q. Will you prolong that up there just a little and show the way the river runs toward Oregon City.

A. I have got this a little out of proportion, I think. This here is Rocky Reef that comes out

(Deposition of Olaf F. Hegdale.)

here; then it comes in in this shape, and then goes up, and this is just the same (witness drawing and modifying previous drawing). This is about the way it is.

Mr. MONTGOMERY.—Mark that thing you referred to as a reef.

Mr. WOOD.—I am going to have him mark them all. I will mark it Rocky Reef.

WITNESS.—The Clackamas River is over there.

Mr. WOOD.—I will put that arrow for the current.

WITNESS.—Pardon?

Mr. WOOD.—I say the current is this way.

WITNESS.—The current is that way. It would be drawn for both rivers, that way.

Mr. WOOD.—This would be the current (drawing another arrow). This is what we call the eastern shore here?

WITNESS.—That is the east shore there, yes, sir.

Mr. WOOD.—And this is the western; is that right?

A. Yes. It is not absolutely true east or absolutely west, but it would be the westerly and easterly shores. That is as near [50] as we can come to it.

Q. Now, will you mark approximately that point of the stranding?

A. The point of the stranding; well, approximately from that island it would be about there (witness marked same). Now, I want to explain to you

(Deposition of Olaf F. Hegdale.)

that this here is not an island at this stage of water but only in the lower stage. At this stage I went through there this island was submerged.

Q. I will say "submerged island."

A. Submerged island. That would be proper, because it was submerged on that day. The only thing on the island is a little bit of cottonwood brush that grows under the water. It is just really a big gravel pile; that is what it is.

Mr. WOOD.—Well, I will say "gravel bar submerged at this stage of water"; is that right?

A. Yes, that would be proper. Just let me have that a minute. I have got this really wrong to show the condition of this channel on the other side. (Witness changes his previous drawing.) It comes out almost square here, and this one comes this way. That is a little more like it. It is almost a square turn on the other channel.

Mr. MONTGOMERY.—For the purpose of clarity, you were referring by "the other channel" to the western shore?

A. Yes.

Mr. WOOD.—I was going to mark these channels.

Q. Now, what is this channel that goes down next to the western shore? You referred to it by some name, as high water or low water channel?

A. That is the low water channel.

Q. Shall I mark it such?

A. Yes, you can mark it the low-water channel. The other [51] channel is not deep enough.

(Deposition of Olaf F. Hegdale.)

Q. This is the high-water channel?

A. That is the high-water channel.

Mr. MONTGOMERY.—What do you mean by “the other channel”?

WITNESS.—Which?

Mr. MONTGOMERY.—From the standpoint of the western or eastern channel, what do you mean by “the other channel”?

A. Well, the western channel is the low water channel and the eastern channel is the high water channel.

Q. (By Mr. WOOD.) And at this high stage of the water you prefer the high water channel for what reason?

A. It is much straighter.

Q. Wider? A. Yes, and wider.

Q. And how does the current compare in the high water channel with that in the low-water channel?

A. Approximately the same.

Q. At this stage of water we are talking about all the time.

A. Approximately the same.

Q. And this high water channel is approximately at this stage of water three hundred feet in width?

A. Two hundred fifty feet in width, I should judge.

Q. Is it about the same width all the way down, or is it narrower up at the head and wider at the bottom, or how is it?

A. It holds almost the same width clear through

(Deposition of Olaf F. Hegdale.)

past the big bar there. It narrows, if anything, right down here, and when you come out by the island it narrows between two little sand bars but it is hardly enough to mention.

Q. What was your reason for sticking the vessel's nose into that slack water? [52]

A. To keep from going on the shallow water on the gravel bar.

Q. Where was it? You can mark on there about where it was, that the vessel's nose got into the slack water and you began to lose control of her.

A. Let's see. You want me to mark a place there where I knew I had lost control of the vessel? Is that what you mean?

Q. Well, as I understand it you say that you lost control of the vessel because in keeping over toward the starboard in order to avoid the gravel bar you got her nose into the slack water and then you could not bring her back into the swift water again because the swift water swung her stern downstream. Have I got your theory right?

A. No, I don't think you have.

Q. All right; then I am glad to know it.

A. I don't think I stated I got her nose into the slack water before I lost control of her.

Q. Well then, I will ask you please to state it again.

A. I held over towards that and she did get in the slack water after she would not come out fast enough. She wasn't in the slack water when I started to back.

(Deposition of Olaf F. Hegdale.)

Q. When you say, "Started to back" you don't mean back the engines, do you? A. Yes, sir.

Q. Oh, you do?

A. Yes, sir. When I seen that she would not answer, that she would not come fast enough, I made up my mind on the acute danger I had and immediately reversed the engines and started back full speed astern to check her headway, to stop her, if possible, and back her out if she would not come out otherwise.

Q. You were backing her against the current then? [53]

A. I was backing her against the current as strong as I could so as to swing her bow out. When she struck the gravel here on the shore, why, her headway was greatly stopped but not entirely, because I could not stop her in that short distance in the current.

Q. Now, I wanted to know approximately whereabouts in that channel it was that you commenced to back her?

A. Commenced to back her?

Q. That is, when you first realized that you hadn't control over her?

A. Approximately just really passing the mouth of the Clackamas in the lower edge of the Clackamas River, right about here (indicating on sketch).

Mr. MONTGOMERY.—Make a cross, I suggest.

WITNESS.—All right; right there (witness making cross on sketch). That is probably where I commenced backing her.

(Deposition of Olaf F. Hegdale.)

Mr. WOOD.—All right. I will write there “commenced to back.”

Q. And how far did you proceed before you hit the bank?

A. Let's see; close on to a thousand feet, between eight hundred and a thousand feet.

Q. Have you any better control over your boat when you are backing her than when you have got your engines full speed ahead, or, I won't say full speed ahead but going ahead?

A. Have I better control?

Q. Yes, when backing. I notice you backed her when you wanted to resume control.

A. Why certainly, if the boat makes a run for any object that you don't want to hit, your only resource is to back her. You certainly have better control backing her against her [54] rudders than you have going ahead, as well as stopping her headway. A stern-wheel steamer will answer her rudders as quickly or quicker by backing than it will by going ahead.

Q. That is what I thought. A stern-wheel throws the water from the paddle wheels against the rudders?

A. Right up against the blade of the rudders, and when you are steering ahead you only get the speed of the boat in the current.

Q. Did she respond to her helm when you began to back there readily?

A. She responded but not readily enough to clear the bank.

(Deposition of Olaf F. Hegdale.)

Q. Did she swing her bow somewhat to port?

A. She swung her bow somewhat to port but not enough to miss.

Q. How were you navigating your boat with respect to your engines at the time you commenced to back her there? Were you going full speed ahead or half speed?

A. Half speed ahead.

Q. Or what were you doing?

A. Half speed ahead.

Q. You would have a better control of her, however, going down through that rapid water if you had drifted or had been backing your engines, wouldn't you?

A. No, not necessarily. I have gotten in trouble drifting it just as well as I have when going ahead.

Q. Now you admit you have got better control over these stern wheel boats when you are backing them than you have going ahead?

A. In some instances, yes, sir.

Q. Especially in swift water?

A. Not in all cases. There is cases where we have to run full speed ahead to make a safe passage through places, just in accordance [55] to the conditions of the river.

Q. Did you ever navigate in Alaska?

A. I have not.

Q. Well, isn't it a fact that generally boats coming down through rapids come through with their engines backing?

(Deposition of Olaf F. Hegdale.)

A. There is if the rapids are crooked or cross currents.

Q. Well, that is what this was?

A. I have stated before that this is not a rapid at this stage of the water; it is just simply a straight, strong current.

Q. But very swift? A. Very swift.

Q. Don't you think that you would have had better control over your boat if you had gone into that rapid, or into that swift water there with your engines slowly reversing, say, instead of going half speed ahead?

A. I certainly didn't think so at the time. If I had I certainly would have backed her and drifted her.

Q. How much does she draw when she is light?

A. She draws about twenty-seven inches light.

Q. So that your load that you had on her at this time, which you say is something over two hundred tons, would submerge her about three feet more?

A. A little bit less than three feet; approximately.

Q. Giving her a total draft of around five feet?

A. Around five feet; yes, sir.

Q. You were going down there approximately the middle of that channel, weren't you?

A. I aimed to hit it as near the middle as I could. That was the idea.

Mr. WOOD.—That is all. [56]

Redirect Examination by Mr. MONTGOMERY.

Q. It had not been your custom, Captain, to go through this particular swift water to which coun-

(Deposition of Olaf F. Hegdale.)

sel has referred, with your engines reversed, had it, up to that time?

A. Never; never go that channel with the engines reversed.

Q. Now referring to the chart which you have drawn here, which I will ask the reporter to designate as Hegdale's Exhibit 1, with consent of counsel,—I understood you, did I not, that in passing through that portion designated as the high water channel in close proximity to your designation "X" that you had possibly one hundred or one hundred fifty feet of water on the port side between you and the gravel bar?

A. Approximately one hundred fifty feet that the vessel would not hit on; but it was shoaling; it shoals gradually towards this bar, and it is deep when you get close to the other shore and our main point was to keep as close to the deepest water so that the vessel will answer, will steer better. If you run a vessel on to a shoal, the shoal side of a channel too close, she has a tendency to suck that way more or less, and not answer so good. That was my idea of holding over to the other shore, so as to stay in the main part of the channel as much as possible, the deepest channel, right in the middle.

Q. Now were you present at the time of the government inspection prior to the time of the accident referred to in this case? A. I was.

Q. Do you know to what extent that inspection was made at that time by the government officers?

A. They were making that inspection just as

(Deposition of Olaf F. Hegdale.)

thorough as any [57] inspection, and they found all defects and condemned a few little things, as they always do; but with the equipment, I was through with one of the inspectors in the hold myself.

Q. And were all their requirements conformed to?

A. All of the requirements were conformed to, with the exception of a piece of hose, I think, that had to be replaced, or something like that.

Mr. MONTGOMERY.—I think that is all.

Recross-examination by Mr. WOOD.

Q. When you said that you went towards the shoal water there was a tendency to suck that way, what way did you mean? Did you mean suck off toward the shoal water further?

A. Yes; you have a tendency to get on shoal water and she wants to run that way a little more, and that is your object in staying as near the middle of the channel as you possibly can when it is shallow on both sides.

Q. When you navigate this low water channel do you go down there with engines half speed ahead?

A. That channel is too crooked to run at all; you have always got to drift it.

Q. You always drift that?

A. Always drift that, starting around here, clear through. You never can run that channel.

Mr. MONTGOMERY.—Starting over here at what point?

(Deposition of Olaf F. Hegdale.)

A. Starting at the Rocky Reef; that point. We start there and drift around all the way through. We never can run in there.

Q. (By Mr. WOOD.) And you control your boat, guide her while drifting, how—by reversing your engines from time to time? [58]

A. By reversing the engines and changing the rudders from time to time, according to the position of the vessel.

Q. But changing your rudder doesn't do you any good if your boat is just moving along at the same rate with the water; you have got to reverse your engine, haven't you, to give effect to the rudder?

A. Certainly; yes.

Q. And that gives you better control in going through this bending channel?

A. That is about the only way we can go through that channel.

Q. Well, why is it the only way?

A. Because it is too crooked.

Mr. WOOD.—You didn't introduce this. Do you want me to introduce it?

Mr. MONTGOMERY.—Yes, I would like to have you introduce it.

Mr. WOOD.—We will introduce it as Respondent Hegdale Exhibit 1.

(The sketch made by the witness, as shown above, so offered, was thereupon marked Respondent's Hegdale Exhibit 1 and is attached hereto and made a part of this deposition.)

(Deposition of Olaf F. Hegdale.)

Q. You said that you had experienced these sheers before with the "Ruth"?

A. With any boat. Steering in swift currents she will once in a while take a little sheer.

Q. Well, this wasn't a little sheer; this was a sheer that got beyond you. Did you ever experience before this anything more than just little sheers?

A. I have often had them; have sometimes had them barely escape, and in speaking of the low water channel in drifting there, I have got in trouble with that channel only last year [59] with the steamer that I am running now; I got in trouble there and got crosswise, drifting through, going as slow as I possibly could go.

Q. On account of the sheer?

A. On account of the sheer. The current just took a sheer and carried the steamer around absolutely against my wishes and all I could do. The steamer was landed there across that channel. It was too shoal for the steamer to turn around.

Mr. MONTGOMERY.—By that channel you mean—

Mr. WOOD.—(Interrupting.) The low water channel?

WITNESS.—The low-water channel was too shoal for the steamer to turn around, and she just took simply the same thing on me there, and her nose stuck in the gravel on one side and her stern landed on the other. But I had her in such control at that time that she didn't do any more damage

(Deposition of Olaf F. Hegdale.)

than tear out the rudder and the wheel, but no damage to the hull.

Mr. WOOD.—That is all.

Redirect Examination by Mr. MONTGOMERY.

Q. Your method of navigating the high-water channel and the low water channel is entirely different, if I understand you correctly, is it not?

A. Entirely different.

Q. And what is the primary reason for that difference?

A. The primary reason is that the low-water channel cannot be navigated by steering full speed ahead, or steering at all, except by backing and drifting. The high-water channel is pretty near straight and you can make it with much greater safety by steering straight ahead than you could in any other way, to my way of thinking. [60]

Q. How do the two channels appear from the standpoint of safety at this particular period of the stage of the water such as existed at the time of this accident?

A. In my judgment the high-water channel was as safe as the other.

Recross-examination by Mr. WOOD.

Q. Now, Captain, that last question of yours compels me to resume my examination. I thought I had finished. You say you can navigate this high water channel with greater safety by going half speed ahead? A. Yes.

Q. Will you please explain why that is so, when

(Deposition of Olaf F. Hegdale.)

you have just told me that you could control your boat better by drifting and reversing your engines, and that that is the very reason you so navigate in the low-water channel, because it is a crooked channel and you want to control your boat better? Now, why do you say that the high-water channel can be navigated with more safety going with your engines ahead than drifting and reversing them?

A. It is simply the same as any other part of the river in high water; it is a comparatively straight current and we can navigate that part of the river with as great a safety in that stage of water as we can almost any part of the river.

Q. Yes, but you can navigate it with still greater safety if you are drifting? •

A. I don't know that you can.

Q. And with your engines reversed, as the occasion requires, can't you?

A. I don't think that I could. [61]

Q. Why not, if drifting and reversing your engines give you better control of your boat?

A. In this case it does not; because if I drift I never go outside of the channel, and if I don't drift I go there, and when the water is high—

Q. (Interrupting.) What side of the river?

A. The high-water channel, the west—or the east shore channel; I have never drifted that channel. When it is so I can't run that with safety I never go there. I go the other channel, the low-water channel.

(Deposition of Olaf F. Hegdale.)

Q. Well, you could not run it with safety at this time?

A. Well, it is a condition that existed, and a peril of the sea that no one can foresee.

Q. Do you mean to tell me now, Captain Hegdale, that after having stated that you have got better control of your boat in the swift water drifting, do you mean to say that if you had drifted the high-water channel at this time you could not have kept your boat from stranding?

A. If I had drifted her in that stage of water in the high-water channel I would have had more difficulties.

Q. What would they be?

A. Because the current would probably set me one way or the other on some other bar, if one were ahead.

Q. And if the current had tried to do that you could have better controlled your boat drifting and reversing than going ahead with her?

A. No, not in that channel, because I could not hold the speed of the boat. The current was too great to stop the boat entirely at any place in that current, and the only safe way was to run it through, and it would steer through excepting for a [62] condition which I could not foresee.

Q. You mean to say then that in currents that are very swift it is safer to go fast than slow?

A. In a good straight current it is just as safe in my opinion, just as safe in a good straight cur-

(Deposition of Olaf F. Hegdale.)

rent; it is just as safe—or a straight river, or comparatively straight.

Q. Well, this wasn't so straight but what you ran your nose into slack water and got twisted around; so it wasn't straight?

A. A perfectly straight river might cause the same thing, if the boat for some unaccountable reason had done the same trick; if it was absolutely an air line it would do the same thing; if it took a sheer for the shore it would do the same thing. A slight bend in the river would have nothing to do with that.

Mr. WOOD.—That is all.

Redirect Examination by Mr. MONTGOMERY.

Q. How many times approximately prior to this accident had you navigated the high-water channel referred to on chart Hegdale Exhibit 1, in terms of months and years? A. How many times?

Q. Yes.

A. Why, different times when this stage of water permitted, for all the time I have run on the Willamette River.

Q. And how many years is that?

A. I have been on the Willamette River for over twenty years—twenty-two years.

Q. And the judgment which you exercised at this particular time was the judgment based on the experience of the past, was it? A. Yes.

Mr. WOOD.—Wait a minute. I object to that as leading and [63] move to strike it out.

(Deposition of Olaf F. Hegdale.)

Mr. MONTGOMERY.—Well, I will withdraw the question in the form presented and ask you on what you based the judgment which you exercised at this particular time in passing through this high-water channel?

A. On previous times that I ran through on the same conditions.

Mr. MONTGOMERY.—That is all.

Recross-examination by Mr. WOOD.

Q. At this stage of the water how did you navigate the "Ruth" coming up the river through that water?

A. Steered her right straight up through.

Q. Did you have to rope her up on the bank?

A. No, sir.

Q. What do you call that method where you put a line up? A. Lining.

Q. You didn't have to line her up?

A. No, sir.

Q. She had enough power to go through that swift water? A. Yes, sir.

Mr. WOOD.—That is all.

Mr. MONTGOMERY.—You mean by the swift water that high-water channel, Captain?

A. Now, I will explain that. She will go up the river, and for one thing she hasn't got usually the heavy load and she would go with the same load, she will turn around and steam upstream; but going downstream a steamer hasn't got the power backing that it has to push ahead; she will run ahead probably ten miles an hour. Well, the best

backing speed you can get for her will be six or probably less. [64]

Mr. WOOD.—That is all.

Mr. MONTGOMERY.—That is all.

And further deponent saith not.

Signature waived. [65]

United States of America,

State of Oregon,

County of Multnomah,—ss.

I, Alva W. Person, a Notary Public for Oregon, duly commissioned, qualified and acting, hereby certify that pursuant to and by virtue of the attached stipulation between the proctors for the respective parties in that cause of libel pending in the Southern Division of the United States District Court for the Northern District of California, First Division, wherein Willamette Navigation Company, a corporation, is Libelant, and Hartford Fire Insurance Company, a corporation, is Respondent, I took the deposition of Olaf F. Hegdale, a witness on behalf of the Libelant, on the 9th day of March, 1921, beginning at the hour of eleven o'clock A. M. and concluding at 12:15 o'clock P. M. of said day, at the office of Messrs. Platt, Platt, Montgomery & Fales, Room 619 Platt Building, Portland, Oregon; that at said time and place Mr. Hugh Montgomery appeared as proctor for Libelant and Mr. Erskine Wood appeared as proctor for Respondent; that before taking said deposition the said Olaf F. Hegdale was by me duly sworn to tell the truth, the whole truth and nothing but the

truth concerning the matters in controversy in said cause; that said deposition was conducted by oral questions and answers, and said oral questions to and answers of said witness were by me taken in shorthand and thereafter transcribed, and the foregoing transcript, pages numbered 1 to 28, both inclusive, contains a true and correct record of said deposition so given, the witness' signature thereto having been expressly waived by the attached stipulation. [66]

I further certify that I have no interest in any manner whatsoever in the outcome of said cause; that I am not related to, in the employ of, or in any way connected with the parties to said cause or the proctors for the respective parties.

In witness whereof I have hereunto set my hand and notarial seal this 10th day of March, 1921.

[Seal] ALVA W. PERSON,
Notary Public for Oregon, Residing at Portland,
Multnomah County, Oregon.

My commission expires July 28, 1924.

Notary's fee and stenographic services taking above deposition and preparing transcript, \$19.00.

Paid by Libellant.

ALVA W. PERSON,
Notary Public for Oregon.

[Endorsed]: Filed Mar. 23, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [67]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,514.

Before Hon. M. T. DOOLING, Judge.

WILLAMETTE NAVIGATION COMPANY, a
Corporation,

Libelant,

vs.

HARTFORD FIRE INSURANCE COMPANY,
a Corporation,

Respondent.

(Testimony Taken in Open Court.)

THURSDAY, JUNE 23, 1921.

Counsel Appearing:

For Libelant: IRA S. LILLICK, Esq.

For Respondent: L. T. HENGSTLER, Esq.

Mr. LILLICK.—If your Honor please, this is an action brought by the Willamette Navigation Company, a corporation, against the Hartford Fire Insurance Company, a corporation, upon a policy of insurance, a copy of which is attached to the libel, under which the Hartford Fire Insurance Company, in consideration of a \$1500 premium, insured the Willamette Navigation Company for account of themselves, loss, if any, payable to assured, to the amount of \$20,000, on paper in rolls and/or bundles, and/or packages, and on merchandise and/or supplies, while on board the steamer "Ruth,"

and/or "N. R. Lang," at and from Oregon City, Oregon, to ports and places in the Willamette and/or Columbia Rivers and tributaries, [68] and from Portland, Oregon, and ports and places in the Willamette and/or Columbia Rivers and tributaries to Oregon City, Oregon, direct or via ports and places; warranted not to use ports and places below Astoria or above Cascade Locks on the Columbia River, or above Pulp Siding, on the Willamette River.

The terms of the policy provided that in case of a total or partial loss of any cargo while on board the steamer "Ruth" or the steamer "Lang," coming down the Willamette or Columbia Rivers, the company shall not be liable in excess of \$8000. It is a form of policy which is known, I believe, as an open policy; in any event, it was a policy written to cover the Willamette Navigation Company on cargoes carried by either of those two steamers down the river.

The "Ruth," on the 11th day of January, 1913, loaded some paper from the paper mills of the Willamette Pulp & Paper Company. The Willamette Navigation Company, owning these two boats, and acting for the Willamette Pulp & Paper Company, took on board two consignments of paper, one consignment of paper belonging to the Crown-Columbia Paper Company, which consignment, with the loss that ensued, amounted, in its damage, to \$1158.80; the other consignment belonging to the Willamette Pulp & Paper Company, and the loss

upon that amount to \$5621,85, which is the amount for which we are suing.

The libel alleges that libelant is an Oregon corporation. The answer denies that. Do you stand on that denial, Mr. Hengstler?

Mr. HENGSTLER.—No.

Mr. LILLICK.—Then it will be admitted that the Willamette Navigation Company is an Oregon corporation.

Mr. HENGSTLER.—Yes.

Mr. LILLICK.—The answer alleges, and the libelant admits, [69] that the Hartford Fire Insurance Company is a corporation organized under the laws of Connecticut, doing business in San Francisco and elsewhere in marine policies.

The libel alleges that on the 20th day of May, 1921, the Hartford Fire Insurance Company, for a consideration of \$1500 paid by the Willamette Navigation Company to it, issued and delivered to Libelant, with loss, if any, payable to the assured, its policy of insurance numbered 304, the original of the exhibit attached to the libel, in which the Libelant was insured to the amount of \$20,000 on paper in rolls and/or bundles, and/or packages, while on board the steamer "Ruth," for the term, between the places, and subject to all the terms and conditions set forth in the original policy, numbered 304. That part of the libel is admitted by the answer, with the statement that as to the allegation which I have read, almost word for word, from paragraph III of the libel, insured the Willamette Navigation Company, under the terms and

conditions of the policy, the answer adds, "and not otherwise."

Mr. HENGSTLER.—That means that it is subject to the terms of the policy, and not otherwise.

Mr. LILLICK.—Yes. So that the admission is that policy No. 304 was issued, the premium upon it, \$1500, was paid, and that the policy insured, as stated in the policy.

The next allegation is: "That on or about, to wit, the 11th day of January, 1913, certain paper, in rolls, was placed in the custody and care of the Libelant herein, at the port of Oregon City, Oregon, and Libelant agreed to deliver the same by the S. S. "Ruth" in good order and condition at the port of Portland, Oregon.

Mr. HENGSTLER.—We admit that. And will you admit that the "Ruth" is a common carrier?
[70]

Mr. LILLICK.—In this sense, Mr. Hengstler: I wish to have before the Court, because of your defense as to the possibility of insurance upon the cargo, that the term "common carrier" be defined as the facts in the case would warrant its being defined, and by submitting to the Court, for the Court's determination upon that point, the bill of lading under which the cargo was carried. I think you and I can agree on the facts as to that. I will offer in evidence the bill of lading under which this was carried. It will be for the Court, then, I take it, to determine whether or not it was as a common carrier.

Mr. HENGSTLER.—You did carry cargo for different people?

Mr. LILLICK.—I think that will be true. Perhaps Mr. Whitney will be able to give me that information. Personally, I do not know exactly what the fact is, Mr. Hengstler. In this particular cargo, there were two consignments, one belonging to the Crown-Columbia Pulp & Paper Company, and the other to the Willamette Pulp & Paper Company. It is my understanding that the paper company sold their product by agreement under which the paper was delivered to the vessel and the title then passed. So that it might belong to any one of a number of people.

Mr. HENGSTLER.—I don't know anything about that.

Mr. LILLICK.—Neither do I; that is only my understanding. Perhaps we had better have that developed.

I am making rather a full statement to the Court, because Mr. Hengstler and I, I think, will agree upon practically all of the points as to the facts; we are widely divergent as to the law.

The libel alleges, further, that after the policy had attached, and on or about the 11th day of January, 1913, the steamer "Ruth," with this paper in rolls on board, set sail upon a voyage from the port of Oregon City, Oregon, to the port of Portland, [71] and during the course thereof, and while said paper in rolls was on board said steamer "Ruth," and said policy was still in force, the said

steamer stranded and sunk in the Willamette River near the port of Gladstone, Oregon.

I think, Mr. Hengstler, you will admit all of that down to the point as to whether or not the steamer stranded and sank. We have a deposition on file which will be, perhaps, the only testimony with respect to what happened to the steamer.

Mr. HENGSTLER.—I don't think that is so. I think there are answers to your interrogatories which give an entirely different version to this accident. The deposition says one thing and the interrogatories give an entirely different version.

Mr. LILLICK.—Then we will have to leave that to the Court to determine. In any event, what I have read, down to whether or not the steamer stranded and sank, will be admitted, will it not?

Mr. HENGSTLER.—No, I cannot admit it, because you, on your side, under oath, gave two entirely different versions of the accident. We know nothing about how the accident happened.

Mr. LILLICK.—Pardon me, Mr. Hengstler, I am not speaking of that, I am trying to take out of the allegation that part of it which you deny. The first portion that I have read you will, I take it, admit: That after the policy had attached, and on or about, to wit, the 11th day of January, 1913, the said steamer "Ruth," with said paper in rolls on board, set sail upon a voyage from said port of Oregon City, Oregon, to said port of Portland, and during the course thereof, and while said paper in rolls was on said steamer "Ruth," and said policy was still in force— [72]

Mr. HENGSTLER.—I admit everything down to that point.

Mr. LILLICK.—Then that is admitted. As to what happened will be for the Court to pass upon. What we have alleged as happening is that the steamer stranded and sunk in the Willamette River near the port of Gladstone, Oregon.

Then, following that out, Mr. Hengstler, no doubt you will admit that the paper was damaged by reason of what happened to the vessel; in other words, the paper was damaged. The amount of that damage you are not willing to admit, I take it, but you will admit that the paper was damaged?

Mr. HENGSTLER.—Yes.

Mr. LILLICK.—We then allege that the damage that ensued to that paper amounted to \$5153.20, and that due to certain of the paper that was insured under the policy having been saved, salvage charges amounting to \$468.65 became due under the terms of the policy for the salving of that cargo. The terms of the policy covering, as they do, salvage charges, we will look to the Court for a decree permitting us to recover that salvage.

Our next allegation is that the libelant, to whom the said policy was, by its terms, made payable in case of loss—

Mr. HENGSTLER.—Pardon me, there is another allegation, that no part or portion of said sums have been paid.

Mr. LILLICK.—Yes, that is right at the very end of the other allegation; I didn't omit it for any reason, Mr. Hengstler; of course, it has not been

paid, and that is the reason we are here suing. I also allege that no part or portion of said sums have been paid. By the answer, Mr. Hengstler sets up a receipt in full from the Willamette Navigation Company for the loss suffered in this particular accident, and which receipt recites that the sum of \$1158.80 was paid to the Willamette Navigation [73] Company, and for that the Willamette Navigation Company gave a receipt in full. Perhaps the denial upon the part of the insurance company that no part or portion of \$5153.20 and \$468.65 has been paid is due to the defense that the company claims that this \$1158.80 was \$1158.80 which applied in part to this other loss.

Mr. HENGSTLER.—We claimed that we settled this loss because it was a receipt in full settlement.

Mr. LILLICK.—I take it that your denial of our allegation is based on the claim on your part that the payment of \$1158 is payment in full.

We expect to show there were two consignments of paper on the "Ruth," one belonging to the Crown Columbia Pulp & Paper Company, the loss on which amounted to \$1158.80; and another belonging to the Willamette Pulp and Paper Company, the loss on which amounted to \$5153.20, plus the salvage charge of \$468.65, which has not been paid, according to our contention.

The next allegation of the libel is that the libellant, to whom the said policy was, by its terms, made payable in case of loss, has kept and performed all of the conditions of said policy named upon its part to be kept and performed, and made proofs

of loss of said salvage charges, and requested the respondent to pay the same, but the respondent has not paid, and refuses to pay the same, or any part or portion thereof. This is denied, and, therefore, puts upon us the burden of proving the fact that we made proofs of loss.

The pleadings leave, I think, for the Court's determination as to facts, but a very few issues, the main contention upon our part, which is denied by Mr. Hengstler, will call upon the Court to pass upon questions of law rather than questions of fact. [74]

I think that is a full statement of the case, Mr. Hengstler.

Mr. HENGSTLER.—Yes. It will very largely hinge upon questions of law.

Mr. LILLICK.—We offer in evidence the deposition of the captain of the "Ruth." The deposition was taken before a notary public in Portland, Oregon.

The CLERK.—I do not think it has been filed.

Mr. LILLICK.—I don't know where it could be. Perhaps Mr. Hengstler and I can agree on a copy.

Mr. HENGSTLER.—The deposition must be here.

Mr. LILLICK.—Well, anyhow, the Court, no doubt, would not care to have us read the deposition. The case will be submitted on briefs, anyway, and if Mr. Hengstler will permit that course to be followed, and if it is agreeable to your Honor, because I am not prepared to argue the case this morning. If that is satisfactory to the Court,

the deposition may be offered in evidence and considered read. I will see to it that it is on file.

Mr. HENGSTLER.—If it is satisfactory to the Court that the case should be submitted that way, it will be satisfactory to me.

Mr. LILLICK.—If the deposition is not found in the postoffice I will leave my copy. It is the deposition of Olaf Hegdale.

Mr. HENGSTLER.—And you offer the direct examination and cross-examination, as well?

Mr. LILLICK.—I am offering the whole deposition. Is there any new matter in the cross-examination that I might object to, Mr. Hengstler? Is that what you have in mind?

Mr. HENGSTLER.—No. I simply wanted to know whether you were offering the direct examination and also the cross-examination. [75]

Mr. LILLICK.—I am concerned about Mr. Hengstler's statement. You certainly won't offer your cross-examination. I don't want to be bound by any seeming offer that would bind me to what the witness said, or offering the deposition simply so far as my direct examination is concerned.

The COURT.—If you put a witness on the stand and something develops on cross-examination, you cannot stand from under it by saying you only offer the direct examination.

Mr. LILLICK.—I never heard of the matter being suggested before, your Honor, and it makes me a little curious to know just what was in Mr. Hengstler's mind. I don't know what Mr. Heng-

(Testimony of Adam Gilliland.)

stler's point might be, but we offer the whole deposition in evidence.

We call upon the respondent for a letter written by me to Mr. Gilliland, under date of June 13, 1913, with the enclosure referred to in that letter.

Mr. HENGSTLER.—Do you want the original, or have you the copy, Mr. Lillick?

Mr. LILLICK.—I have the copy. What I was particular about having in evidence was the statement of the loss that was appended to the letter.

Mr. HENGSTLER.—You mean the proof of loss?

Mr. LILLICK.—It is referred to in the letter as the statement of loss.

Mr. HENGSTLER.—I have the original letter here, Mr. Lillick, but there is no statement of any loss.

Mr. LILLICK.—Is Mr. Gilliland here?

Mr. HENGSTLER.—He will be here—oh, yes, he is here now.

Mr. LILLICK.—Then I will call Mr. Gilliland to the stand. [76]

Testimony of Adam Gilliland, for Libelant.

ADAM GILLILAND, called for the libelant, sworn.

Mr. LILLICK.—What is your connection with the Hartford Fire Insurance Company?

A. Assistant General Agent.

Q. And what was your connection with that company on June 13, 1913?

A. I think it was the same. I have forgotten the exact date on which the appointment was made.

(Testimony of Adam Gilliland.)

Q. I hand you what purports to be a letter signed by me, dated June 13, 1913, and ask you whether you remember having received that letter upon or about the 13th of June, 1913?

A. I have no distinct recollection of it; I may have.

Q. You say you may have received it. Have you any recollection of having handed this particular letter which I hold in my hand to your counsel?

A. No, I have not. I handed all the papers in my possession to counsel, but in the intervening years I paid little or no attention to it.

Q. Do I understand you that you have no recollection of having received this letter from me?

A. No, I have no distinct recollection of that particular letter.

Q. How many letters have you ever received from me?

A. I could not say. I have not refreshed my memory recently, and seven or eight years have elapsed, during which time I have paid no attention to the matter, and naturally I have forgotten these particular matters.

Mr. LILLICK.—Mr. Hengstler, will you admit that this letter was delivered to you by the Hartford Fire Insurance Company in connection with the facts that were submitted to you by that company regarding this case?

Mr. HENGSTLER.—Very likely. They were delivered to Judge Coogan, and very likely Judge Coogan got it from the Hartford [77] Fire In-

insurance Company. There is no question about that.

Mr. LILLICK.—I was going to take the stand to testify to it myself.

Mr. HENGSTLER.—Oh, no, there is no question about its being written by you. That is your signature.

Mr. LILLICK.—And you got it from the files of the Hartford Fire Insurance Company?

Mr. HENGSTLER.—I got it either from the files of the Hartford Fire Insurance Company, or from Judge Coogan, who received it from the files of the Hartford Fire Insurance Company.

Mr. LILLICK.—I offer this letter in evidence, and I will read it.

Libelant's Exhibit No. 1.

(Letterhead of IRA S. LILLICK.)

“San Francisco, June 13 1913.

“Adam Gilliland, Esq.,

Assistant General Agent,

Hartford Fire Insurance Co.

430 California St., San Francisco.

“Dear Sir:—

“Enclosed herewith please find statement of loss of Willamette Pulp & Paper Co., on steamer ‘RUTH,’ claim for which has been made against the Willamette Navigation Co., which statement I promised to send you the other day, but which has been delayed on account of a rush of other matters in the office.

I have been unable to make up the formal claim which I told you that I would furnish you the other day, on account of not having at hand a copy of the bill of lading which I desired to attach to it, but this will follow in due course, unless by reason of your settlement of the claim for loss sustained to the shipment of the Crown Columbia Paper Co., you are already in possession of the data necessary to enable you to pass upon the claim, the [78] statement of which I am enclosing.”—

Mr. HENGSTER.—Pardon me for interrupting you, Mr. Lillick. The letter is not admitted in evidence, your Honor? It is simply offered in evidence.

The COURT.—Yes.

Mr. HENGSTLER.—This is merely a self-serving letter, which has not any place in this case at all.

Mr. LILLICK.—The purpose of the letter is to prove proofs of loss by us under the terms of this policy. It has that purpose, and that purpose alone, except for how it may tie into the testimony that I believe I will be able to present with reference to two consignments of paper upon the vessel. My contention will be that the Hartford Fire Insurance Company, under the terms of this particular policy, paid a loss amounting to \$1158.80, and paid that loss on or about April 24, 1913, and that having before it all of the facts in connection with the loss that ensued in the accident to the steamer, no further proof of the actual facts as to the loss is made necessary so far as we

are concerned, because all of the facts in connection with the loss were so well known to the Insurance Company that they paid the loss under it; and also because I expect to be able to bring out from Mr. Gilliland that this letter followed a conference that he had at my office a day or two before the letter was written. That is the object of the offer.

Mr. HENGSTLER.—I understand that you admit that no proofs of loss were ever made in accordance with the terms of this policy.

Mr. LILLICK.—On the contrary, that is just exactly what my proof to this court will establish, that under the terms of the policy, and under the law, proofs of loss were made in connection with the conduct of the Hartford Fire Insurance Company in [79] connection with a report from their own surveyor, who went out and examined the property.

Mr. HENGSTLER.—What is the date of this letter?

Mr. LILLICK.—June 3, 1913.

Mr. HENGSTLER.—You admit that the policy provides that proof of loss must be made within thirty days after the accident?

Mr. LILLICK.—If that is in the policy I will admit it readily.

Mr. HENGSTLER.—It is in the policy.

Mr. LILLICK.—I think the clause Mr. Hengstler has reference is the following:

“And in case of loss, such loss to be paid thirty days after proof of loss, and proof of interest in

said property, are furnished this company, provided always, and it is hereby further agreed, that if the said insured shall have made any other insurance upon the property aforesaid, prior in date to this policy," etc.

Is that the clause?

Mr. HENGSTLER.—There is a provision that proof of loss must be made within thirty days after the accident.

Mr. LILLICK.—The clause Mr. Hengstler has in mind is this:

"Immediate notice of the occurrence of all losses shall be given to this company by the insured; and within thirty days from the time the same may happen, the said insured shall deliver to said company as particular an account thereof as the nature of the case will admit, stating the causes, if known, the extent thereof, and the nature of the interest of insured in the property, also what other insurance or insurances if any there was on said property at the time of said loss, which statement shall be in writing, signed by the insured, and [80] verified by his or their oath; and so much of said statement as relates to the cause, nature and extent of said loss or damage shall be verified also by the oath of the master of said boat or vessel, or if some other person or persons having immediate charge thereof at the time the same did happen, otherwise this company will not be liable under this policy; and the amount of loss shall be ascertained by the opening of packages, when necessary, by a competent person, and

separating the sound from the damaged portion, this company being liable for the loss on the damaged portion only, which shall be ascertained by appraisement by disinterested persons, or by sale at auction, as this company may prefer."

Mr. HENGSTLER.—Will you admit, Mr. Lillick, that no such proof of loss was made in accordance with the terms which you have just read?

Mr. LILLICK.—No, I will not, Mr. Hengstler. Addressing myself now solely to the objection made by Mr. Hengstler, and following up your request for that decision, I will ask you in a moment for some documents that I believe are in the files of the insurance company that will cover, I think, the point that you wish me to give you an admission upon.

I offer this letter in evidence.

Mr. HENGSTLER.—I object to the offer of this letter in evidence, because it appears on the face of it that it was written long after any proofs of loss should have been made under the terms of the policy. The letter, itself, is not proof of loss in any sense of the word.

The COURT.—The letter will be admitted subject to any objection.

Mr. LILLICK.—The letter continues: [81]

"It was my understanding that formal proof of loss and proof of interest in the property, a statement of which is herewith enclosed, had already been made and from the fact that a representative of your Company went out to the vessel where she was stranded immediately after the loss, I assume

(Testimony of Adam Gilliland.)

that you are in full possession of all of the details with reference to a particular account of the loss, with the causes and extent thereof. The Willamette Navigation Co. had no other insurance upon the property insured under the policy at the time of the loss.

“In my conversation with you, upon Tuesday, I neglected to mention, what you perhaps already know, that the only cargo on board the ‘RUTH’ at the time of the loss was paper in rolls and bundles shipped by the Crown Columbia Paper Co. and Willamette Pulp & Paper Co., consigned to themselves at Portland.

“If there is any further or additional information that you desire, with reference to the claim, the statement of which I am enclosing, kindly let me know and I will see that it is furnished you.

“Yours very truly,

“IRA S. LILLICK,

“Attorney for Willamette Navigation Co.”

(The letter was here marked “Libellant’s Exhibit 1.”)

Q. Mr. Galliland, do you remember that when this letter was received by you there was enclosed with it a statement of the loss of the Willamette Pulp & Paper Co.?

A. No, I do not remember.

Q. I hand you what purports to be an acknowledgment of this letter, Mr. Galliland, and with that before you I ask you do not remember

(Testimony of Adam Gilliland.)

that such a statement of loss was enclosed in the letter?

A. I don't remember it, but this letter would evidently settle the fact that such papers were received. I say here [82] that I have transmitted these papers to Mr. Timberlake.

Mr. LILLICK.—We offer in evidence the letter from Mr. Gilliland, to which his attention has just been called, and ask that it be received and marked “Libelant’s Exhibit 2.”

Mr. HENGSTLER.—I have to object to it on the same grounds, and furthermore on the ground that it appears from this that this was correspondence with reference to a statement of loss and not with reference to a proof of loss. You do not mean to say that the statement you referred to was a proof of loss in any sense of the word, do you, Mr. Lillick?

Mr. LILLICK.—Mr. Hengstler, I would rather not, in answering questions you are asking me, be bound by a legal conclusion as to what they are. My theory of the case, and which the court will have to pass upon, is that in making the claim on the original consignment to the Crown Columbia Pulp & Paper Company, the necessary data were furnished the insurance company, and these letters—with what I think I will be able to obtain from your files—cover exactly what I deem to be, under the law, a sufficient proof of loss.

Mr. HENGSTLER.—Mr. Lillick, to cut all this short, show me your copy of what you claim to be the statement that accompanied that letter.

(Testimony of Adam Gilliland.)

Mr. LILLICK.—I have it here. I asked you for the original, and you say you have not it.

Mr. HENGSTLER.—I didn't say I didn't have it. The company may have it, or I may have it. You didn't ask me to produce any of these things.

Mr. LILLICK.—You misunderstood me. When I asked you for the letter, I asked you for the statement that accompanied it. I ask you now for that statement. [83]

Mr. HENGSTLER.—I will look for it; it may be here, or it may be in my office.

The COURT.—If you have the copy of it there, show it to him and maybe you can use the copy.

Mr. HENGSTLER.—It is just as I thought it was, your Honor, it is a statement of the values of the lost property. That is all it is. It is not a proof of the loss in any sense of the word. I renew my objection on that ground. Also, I want to add to my objection, after hearing that letter, that it contains nothing but assumptions and arguments of counsel, and can have no bearing upon this case. We do not want to be bound by any statements of fact in the letter. In admitting the letter, I understand your Honor does not take the statements made therein as proof of the facts.

Mr. LILLICK.—We offer the letter in evidence as Libellant's Exhibit No. 2. It reads as follows:

(Testimony of Adam Gilliland.)

Libelant's Exhibit No. 2.

(Letterhead of HARTFORD FIRE INSURANCE
COMPANY.)

"San Francisco June 17, 1913.

"Ira S. Lillick, Esq., Attorney,

"608-Kohl Bldg.,

"San Francisco, Calif.

"Dear Sir:

"Acknowledging your favor of the 13th inst. with statement attached thereto referring to claim of Willamette Pulp & Paper Company: We beg to advise you that we have transmitted these papers to Mr. C. S. Timberlake, General Agent of Marine & Transportation Department of this Company at Hartford.

"Yours very truly,

"ADAM GILLILAND.

"Assistant General Agent."

(The letter was marked "Libelant's Exhibit No. 2.")

Q. Mr. Gilliland, I hand you what purports to be a statement [84] of loss of the Willamette Pulp & Paper Co. on the steamer "Ruth," amounting to \$2156.85, and in the absence of the production of the statements that the letter Libelant's Exhibit 1 referred to, I ask you whether or not that is not a copy of the statement that was enclosed in the letter? A. I cannot tell.

Q. Do you remember having seen a statement of similar kind, and with approximately the same figures? A. I remember receiving several state-

(Testimony of Adam Gilliland.)

ments prior to this, but not from you, Mr. Lillick; the facts and figures contained in them I have no recollection of; it might be the same, or it might be very dissimilar; I could not tell.

Mr. LILLICK.—Mr. Hengstler, in answer to the demand I have made upon you, do you find, in looking through your file—

Mr. HENGSTLER.—Mr. Coogan will look through the file. However, if you say that that is the statement that accompanied the letter, I will take your word for it, Mr. Lillick.

Mr. LILLICK.—I am sorry to say, Mr. Hengstler, my own memory is not sufficiently exact to know that. It is my conviction that that is true, but I cannot definitely say that this is an exact copy, with the same figures upon the same page. I do know that on different paper, perhaps, that same statement was attached to my letter.

Mr. HENGSTLER.—To tell you the truth, I don't think it makes much difference, because I do not think the Court will hold that that is a proof of loss.

Mr. LILLICK.—But tied up with other papers I think it will show it.

Mr. HENGSTLER.—As I say, if you say it is the statement, I will take your word for it.

Mr. LILLICK.—I think I will have to testify to the matter, [85] so that the entire situation will be before the Court.

We call for a letter dated September 17, 1913,

(Testimony of Oscar Sutro.)

addressed to the Hartford Fire Insurance Company, and signed by me.

Mr. HENGSTLER.—With the consent of counsel, and subject to your Honor's approval, we will call Mr. Oscar Sutro to the stand.

Mr. LILLICK.—I understand that Mr. Sutro will identify the receipts you have. He is not my witness, your Honor, but solely in order to expedite the hearing, I will ask Mr. Sutro certain questions about the receipts which will have to be identified by him. Shall I put Mr. Sutro on the stand, or will you?

Mr. HENGSTLER.—Just as you please.

Mr. LILLICK.—I would rather have you put him on, because it is a part of your defense.

Mr. HENGSTLER.—All right, I will call him.

Testimony of Oscar Sutro, for Respondent.

OSCAR SUTRO, called for the respondent (out of order), sworn.

Mr. HENGSTLER.—Q. Mr. Sutro, you are an attorney at law, practicing here in this city and county? A. Yes.

Q. You were, in April, 1913, the attorney for the Willamette Navigation Company, were you not? A. Yes.

Q. You made a settlement between the Willamette Navigation Company and the Hartford Fire Insurance Company at that time, did you not?

A. Yes.

(Testimony of Oscar Sutro.)

Q. I will show you a document here and I will ask you what this document is, I will ask you to describe it to the court.

A. It is a receipt signed by the Willamette Navigation Company by myself; the signature is in my handwriting. [86]

Mr. HENGSTLER.—I offer this in evidence, Mr. Lillick.

Mr. LILLICK.—May I see it, Mr. Hengstler? No objection.

Mr. HENGSTLER.—The document reads as follows:

Respondent's Exhibit "A."

**"MARINE AND TRANSPORTATION
DEPARTMENT.**

**"THE HARTFORD FIRE INSURANCE COM-
PANY,
"HARTFORD, CONN.**

"April 24th, 1913.

"RECEIVED of The Hartford Fire Insurance Company, through Palache & Hewett, Genl. Agents at San Francisco, the sum of Eleven Hundred Fifty Eight & 80/100 Dollars, being in full satisfaction and compromise settlement of all claims and demands against the said Company for loss or damage by ~~Fire, Theft, Collision~~ Stranding Str. "Ruth" which occurred on the 11th day of January,

(Testimony of Oscar Sutro.)

1913 to the ~~Automobile~~ property described under Cargo Policy No. 304 of said Company.

“\$1158.80.

“WILLAMETTE NAVIGATION COMPANY,

“By OSCAR SUTRO.”

(The document was marked Respondent's Exhibit “A.”)

Mr. Sutro, at the time when this receipt was given, you understood that it did what it states on its face, namely, that it settled all the claims of the libelant in this case as against the respondent, did you not? A. Yes.

Mr. HENGSTLER.—That is all.

Cross-examination.

Mr. LILLICK.—Mr. Hengstler, we ask you to produce the proof of claim made out by Mr. Sutro, the proof of loss made out by Mr. Sutro, a few days before that receipt was signed.

Mr. HENGSTLER.—Proof of claim?

Mr. LILLICK.—Proof of loss.

Mr. HENGSTLER.—I don't think I have such a document.

Mr. LILLICK.—Isn't it attached to the file from which you took the receipt?

Mr. HENGSTLER.—I will see. Just look here, Mr. Lillick. [87] Is this what you mean?

Mr. LILLICK.—No. The one I wish is the one upon which the payment of \$1158.80 was made.

Mr. HENGSTLER.—I have not any such proof of loss, Mr. Lillick.

(Testimony of Oscar Sutro.)

Mr. LILLICK.—I call upon the respondent for the proof of loss under which the payment of \$1158.80 was made to the Willamette Navigation Company.

Mr. HENGSTLER.—I shall be very glad to ask the Hartford Fire Insurance Company to obtain that document if they have it in their office. I have not it. Mr. Lillick, you have not given me any notice to produce any papers here at all, have you?

Mr. LILLICK.—No, Mr. Hengstler, I have not, but then, I assume you have these papers in your file.

Mr. HENGSTLER.—I will give you anything you want that I can get.

Mr. LILLICK.—I am sure of that. I am not attempting to call on you for something you have not got. I personally prepared the proof, as I understand it, under which the payment of \$1158.80 was paid.

Q. Mr. Sutro, have you a copy of the proof of loss which was made at the time, or about the time, that the \$1158.80 was paid you?

A. I have a copy of a material portion of the proof of loss; I have not the entire proof of loss. I think this is a paper prepared by you. I cannot say that that was the proof that was used, but I can say that that is the paper that you prepared, and I think it was used.

Q. I call your attention to the ink word “used”; is that your writing?

(Testimony of Oscar Sutro.)

A. No, that is not my writing, I think it is yours.

Q. I think it is, too.

A. I know it is not my writing. I think it is Mr. Lillick's writing. [88]

Q. And is it your recollection that that is a part of the proof that was made?

A. My recollection is that that was the rider, the substantial portion of the proof of loss annexed to the usual printed form and used. I base that statement on the word "used," and on the fact that I found it in my file. Here is another copy of it if you care to use it.

Mr. HENGSTLER.—This is your writing, Mr. Lillick, isn't it?

Mr. LILLICK.—Yes, Mr. Hengstler.

A. (Continuing.) Of course, that cites the authority that is on there, I am quite sure that was not a part of the proof of loss; it was only the typewriting, and not any of the ink or pencil writing.

Mr. LILLICK.—We offer this in evidence, except for the citation upon the top, and the word "used," and I will read into the record:

Libelant's Exhibit No. 3.

"The cash value of the property belonging to and owned by the Crown-Columbia Paper Company at the time of loss, the loss and damage on the same for which claim is hereby made, the total insurance upon said property, the total claim for

(Testimony of Oscar Sutro.)

loss under the entire insurance on said property and the insurance and claim under this policy upon said property belonging to and owned by the Crown-Columbia Paper Company is.....\$1158.80.

“And the insured hereby claims and agrees to accept from the Hartford Fire Insurance Company by reason of said loss and damage to said property belonging to and owned by said Crown-Columbia Paper Company the sum of \$1158.80, in full satisfaction of all liability under said policy for said loss and damage to said property belonging to and owned by said Crown-Columbia Paper Company. [89]

“The amount of sound value herein stated does not exceed the cash market value at the time of the said loss of the said property so damaged and so destroyed. The said property belonging to and owned by said Crown-Columbia Paper Company on which this claim for loss is made belonged to and was owned by said Crown-Columbia Paper Company under an agreement with the Willamette Navigation Company, under which the latter Company assumed responsibility for marine perils, and under which said last mentioned company has paid said Crown-Columbia Paper Company.”

(The document was marked “Libelant’s Exhibit No. 3.”)

Q. Mr. Sutro, when you signed the printed proof of loss to which this rider was attached, do you remember whether it antedated the payment to you of the \$1158.80?

(Testimony of Oscar Sutro.)

A. What is the date, please, of that receipt?

Q. April 24, 1913.

A. It did not. If I correctly understood your question, the proof of loss was filed after the payment was made, assuming that the payment was made at the date of the receipt, which I have no independent recollection of.

The COURT.—Maybe I didn't catch that question. Read it.

(Question read by the reporter.)

A. (Continuing.) I should say to you, Mr. Lillick, that I did not sign the proof of loss. I am quite clear in my recollection about that. With the aid of these papers, and such recollection as I have, I know that the proof of loss as finally signed was delivered more than a month after the date of that receipt; in other words, the proof of loss followed the payment.

Mr. LILLICK.—Q. Can you give any explanation as to how or why the insurance company paid you the \$1158.80 before you made out a proof of loss? A. Yes, I think I can. [90]

Q. Will you please do so?

A. The relations between the Hartford Fire Insurance Co. and the Willamette Navigation Company, the insured, were such that the strict formalities were not insisted upon. This loss was the subject of a good deal of discussion. There was a good deal of question by the Hartford Fire Insurance Company whether they were liable on it. They finally became persuaded that they should pay

(Testimony of Oscar Sutro.)

it. We were quite impatient about it, there was a good deal of delay. As soon as the fact that the payment would be made by the Hartford to the Willamette Navigation Company was settled, as soon as they had come to the conclusion that they would make the payment, they made it, and they allowed the formality of proof of loss to follow. I remember that very distinctly. It was also due to the fact that the proof of loss was the subject of some discussion and some delay—the form of it.

Q. Did they accept the proof of loss, which as to the rider upon it is Libelant's Exhibit No. 3, with the specific statement in that proof of loss that it covered only the consignment of paper upon the "Ruth" at the time of this accident which belonged to the Crown-Columbia Paper Co.?

A. I don't know. If that is the paper they accepted, I suppose it speaks for itself, Mr. Lillick; I think that is the paper that was used, and I base that on the fact that the word "used" is written there, and also that the proof of loss, as finally furnished them, was prepared by you, and I think that is your office typewriting and your writing. I think that paper came from your office.

Q. I know that is my writing, and I think it did come from my office. In the statement that you made to Mr. Hengstler, that this receipt covered the entire settlement of all claims [91] and demands against the Hartford for the stranding of the steamer "Ruth" under this policy, did you, at the time that this receipt was made out, approxi-

(Testimony of Oscar Sutro.)

mately a month, as you say, before the proof was made, have before you all of the facts with reference to the shipment of paper upon the "Ruth" at that time, which had been damaged to the extent of some \$5600?

A. I think so, Mr. Lillick; I think the whole case was before us. It was the subject of a good deal of discussion, as you will remember.

Q. Then when the proof of loss was subsequently made out covering only this \$1158.80, was it your understanding that it covered only a part of the shipment, or all of it?

A. I am not sure that I understand your question. I knew that the paper covered by that insurance was not all the paper that was on the vessel, if that is what you mean.

Q. Yes.

A. I don't think that is what you mean to ask me, is it? I know there was other paper on the vessel than the paper covered by that insurance.

The COURT.—Q. When you say "covered by that insurance," what do you mean?

A. Well, that receipt is for \$1158.80.

Q. Yes, I mean covered by that receipt. Do you mean covered by that receipt?

A. Covered by that receipt, yes, that is what I mean.

Mr. LILLICK.—Q. You know something of the facts with reference to the accident, do you not, Mr. Sutro?

A. Nothing further than that the vessel was

(Testimony of Oscar Sutro.)

stranded, and that the paper on the vessel belonging to two different companies was damaged.

Q. And the two different companies, one was the Crown-Columbia Paper Company, wasn't it?

A. Yes.

Q. And that was damaged to the extent of \$1158.80? A. Yes. [92]

Q. There was another consignment belonging to the Willamette Pulp & Paper Company, wasn't there? A. Yes.

Q. And that was damaged to the extent of \$5621.-85? A. Yes.

Q. May I put it this way, Mr. Sutro: In executing the receipt which you did upon April 24, 1913, for the payment to the Willamette Navigation Company of that sum, the amount in question is exactly the amount of the shipment belonging to the Crown-Columbia Paper Company?

A. It was the damage to the Crown-Columbia Paper Company which the Hartford Fire Insurance Company paid to the Willamette Navigation Company.

Q. And that is the amount that you understood you were being paid, isn't it?

A. That was the amount that we were being paid. The Willamette Navigation Company paid the Crown-Columbia Paper Company the amount of that loss and the Hartford Fire Insurance Company reimbursed the Willamette Navigation Company for that payment. I am very clear about that. The paper is evidence of it.

(Testimony of Oscar Sutro.)

Q. And that is all it was the evidence of?

A. That is what it was.

Q. Is it not also the fact that in working out the subsequent proof of loss that was drawn by me and sent to the Hartford, we particularly excepted from that shipment belonging to the Willamette Pulp & Paper Company?

A. Well, I think, Mr. Lillick, that the paper is probably the best evidence of that. You know what the discussions between us were at the time. I would rather not construe the paper.

Q. However, it does not cover any part of the shipment belonging to the Willamette Pulp & Paper Company, does it, Mr. Sutro?

A. It is a proof of loss and was intended to be for the paper which had been shipped by the Crown-Columbia Paper Company, [93] which was damaged, and for which the Willamette Navigation Company paid and for which the Willamette Navigation Company was reimbursed by the Hartford Fire Insurance Company. That was very clear amongst all of us.

The COURT.—Q. What is the difference in the status, if any, between this shipment and the other?

A. There was a very material difference, as I recollect the circumstances. The Crown-Columbia Paper Company was a competitor concern of the Willamette Pulp & Paper Company; the Willamette Pulp & Paper Company controlled the Willamette Navigation Company. The Willamette Navigation Company was practically a subsidiary.

(Testimony of Oscar Sutro.)

The Crown-Columbia Paper Company's shipments were made under bills of lading, and some of the Willamette Pulp & Paper Company's shipments were made under bills of lading and some were not. At the inception of the business between the Crown-Columbia and the Navigation Company, the Crown-Columbia having been advised that the Navigation Company would not issue insured bills of lading, if that is the correct expression, declined to make its shipments unless the Navigation Company would undertake to protect the Crown-Columbia Paper Co. in case of loss. That undertaking, apparently, was expressed in correspondence. The Crown-Columbia Paper Company virtually had what the Willamette Navigation Company recognized as an insured contract, and the Willamette Pulp & Paper Company did not have it.

Q. Why was this claim pressed to a settlement and a receipt given apparently in full for all claims while a much larger claim was held in abeyance?

A. Because the Willamette Navigation Company considered itself liable to the Crown-Columbia Company for the loss to the Crown Columbia Paper [94] Company paper, and it did not consider itself liable for the Willamette Pulp & Paper Company for the loss to the Willamette Pulp & Paper Company's paper; the Navigation Company was insured by the Hartford Fire Insurance Company. Whether it had a sound or an unsustainable claim against the Hartford Fire Insurance Company, the Navigation Company did satisfy the Hartford Fire Insur-

(Testimony of Oscar Sutro.)

ance Company that as it, the Navigation Company, had paid the Crown-Columbia Paper Company, the Hartford Fire Insurance Company should re-pay the Navigation Company.

Mr. HENGSTLER.—Q. Did it admit a legal liability at the time, or merely a moral liability?

A. Did who admit it?

Q. The Hartford Fire Insurance Company.

A. The Hartford Fire Insurance Company disputed its liability; what finally satisfied the Hartford Fire Insurance Company that as matter of either legal principle or business policy it should pay the claim was the exhibition to the Hartford Fire Insurance Company of a letter that the Crown-Columbia Company had shipped only on condition that the Navigation Company would pay any losses.

Q. This was by reason of an outside document, and not by reason of the policy?

A. By an understanding outside the bills of lading. I do not know if I have made the difference clear between the two companies.

The COURT.—You have made the difference clear as between the outsiders and the company, but it is not quite clear yet to me why a receipt should be given in full and the Navigation Company still hold a claim nearly five times the amount; was that under discussion between the companies at all?

A. Yes; the Navigation Company considered that it had a claim—

Q. And pressing that claim?

A. For this sum? [95]

(Testimony of Oscar Sutro.)

Q. For \$5000-odd.

A. Oh, no, it considered that it had a claim for the loss to the Crown-Columbia Company's paper, and that was paid. The Navigation Company did not own the Willamette, Pulp & Paper Company's paper, that was owned by the shipper, the paper company, the Willamette Pulp & Paper Company. The Navigation Company would have no claim against its insurer if it, itself, was not liable to its shipper.

Mr. LILLICK.—Pardon me, Mr. Sutro, I take it that that is your legal understanding of it.

A. (Continuing) No, that is my understanding of the difference in the status between the two companies.

The COURT.—Aren't you suing under the same policy under which the other sum was paid?

Mr. LILLICK.—Yes, your Honor.

The COURT.—I still cannot get it into my head why the receipt for settlement in full of all claims for the sinking of the "Ruth" should be given when you only had in mind about \$1000, and in the background over \$5000.

A. (Continuing.) Because that was the only money that the Navigation Company considered itself legally liable for.

Q. Was this a settlement of a disputed liability, a liability disputed *in toto*, by which the insurance company paid \$1000 because, in good faith, it ought to pay that, or in good morals, rather, because the company had to pay it out of something else? Was that the basis of that whole sum of \$1100-odd?

(Testimony of Oscar Sutro.)

A. I suppose that is what this lawsuit is about; but to answer your question as best I can, I don't remember that the Navigation Company ever asserted its claim against the Hartford Fire Insurance Company for the \$5000 amount.

Q. At that time?

A. At any time, outside of this suit. [96]

Q. If they were not asserting it, they would not be here today.

A. The Standard Fire & Marine is asserting it by right of subrogation, which they have a right to do. The Standard Fire & Marine had insured the Willamette Pulp & Paper Company, and that company paid the loss; if the shipper could recover from the Navigation Company, and the navigation company can recover from the Hartford Fire, then, of course, the Standard Marine, by right of subrogation, could recover from the Hartford Fire Insurance Company.

Q. What I am trying to get at is this: If this claim had been presented before the receipt was signed, we would know just what we were operating on. The proof of loss was, as you say, made long after—

A. It was made a month after.

Q. It was made a month after. If the whole thing was adjusted and the insurance company considered that that whole thing was adjusted by the taking of this receipt, I could well understand why they would not scrutinize at all carefully the proof of loss.

A. I do not believe that the Willamette Naviga-

(Testimony of Oscar Sutro.)

tion Company asserted any claim against the Hartford Fire Insurance Company prior to the payment of that sum for the loss to the Willamette Pulp & Paper Company's paper. Am I not correct in that?

Mr. LILLICK.—Q. I am not sure about the dates, Mr. Sutro; what I have in my own mind is your own connection with the Willamette Navigation Company—not what you are very truthfully stating as to what you believed at the time; I want to refresh your recollection, Mr. Sutro.

A. I remember it very well. You and I discussed it.

Q. I want to call to your attention the minutes of the Willamette Navigation Company, which just about that time had [97] in them a statement as to what the facts were. I ask you what this book is, Mr. Sutro?

A. Of course, I know it is the minute book, but these minutes, Mr. Lillick, I am inclined to think were prepared—were they prepared in San Francisco or in Portland? They were prepared in Portland. I am only sort of ancillary counsel for the Willamette Navigation Company; the principal legal work for that concern was done by Portland attorneys.

Q. I call your attention to an item in the minutes of the Willamette Navigation Company, dated Portland, Oregon, February 15, 1913, as follows:

“The Secretary reported the loss of the steamer “Ruth,” which had sunk in the Willamette River

(Testimony of Oscar Sutro.)

on the 11th day of January, the cargo alone being insured against marine loss, the officers having been released from all liability by the United States Inspectors, and the loss considered by them as one of the risks of navigation. On motion it was unanimously resolved that the officers of said steamer "Ruth" be and they hereby are exonerated and relieved of all liability."

A. You want to call my attention to the fact that this cargo was insured against marine loss?

Q. Yes. A. Why, of course it was.

Q. Also to this entry:

"April 18, 1913. The Secretary stated there was some question regarding the collection of insurance under Hartford Fire Insurance Company's policy covering marine loss. The matter was ordered turned over to the corporation's attorney, Mr. R. A. Leiter, for investigation."

That was on April 18, 1913; that was prior to your receipt of the money, wasn't it?

A. Yes. [98]

Q. I call your attention to the minutes of the Board of Directors, May 21, 1913:

"Balance of loss had not yet been liquidated." Calling your attention to the date, May 21, 1913, that is at least almost a month after the receipt which Mr. Hengstler has put in evidence. So that if I am correct, the directors of the company believed on May 21, 1913, that they still had a balance of the loss on this policy still to be collected?

A. You mean against the Hartford Fire?

(Testimony of Oscar Sutro.)

Q. Against the Hartford Fire.

A. Are you asking me to state what the directors believed?

Q. Isn't this the situation, as shown by the minutes?

A. Well, I am not to guess at what they believed, but if I were to guess I think it would be a pretty accurate one.

Q. As late as May 21, 1913, the Board of Directors, at a meeting—

Mr. HENGSTLER.—I do not want this admitted as a fact. There is no proof of any such fact.

Mr. LILLICK. This is my question:

Q. (Continuing.) Admitted, as late as that date, by the entry in their minutes, the statement: "The Secretary also stated that the Hartford Fire Insurance Company had, on May 8, remitted in full for the amount of the claim made on us by the Crown-Columbia Paper Company, covering their loss, balance of loss had not yet been liquidated." Would you say that when those minutes were read at the next ensuing meeting, on June 13, 1913, they were read and approved?

Mr. HENGSTLER.—How can he know that?

A. I don't know anything about the minutes. I am sure those minutes are correct—I mean, I am sure they are carefully kept. [99]

Mr. LILLICK.—Q. Mr. Sutro, going back to this receipt, there is no doubt in your own mind, is there, that when the proof of loss, which was furnished a month after the receipt of the money, that

(Testimony of Oscar Sutro.)

in that proof of loss no reference was made to the Willamette Pulp & Paper Company's paper?

Mr. HENGSTLER.—That receipt speaks for itself.

Mr. LILLICK.—Exactly, but this is leading up to another question.

A. I am not quite sure there was no reference in any other part of the proof of loss than that which you have introduced in evidence here, and I do not see any in there, either; I think it is safe to say there was none.

Q. Was any exception taken to the form of that proof of loss when it was sent by you to the Hartford Fire Insurance Company?

A. No; on the contrary, it superseded a form which they had tendered, and which was not acceptable to you. They accepted your form.

Q. When the receipt for the check for \$1158.80 was signed by you, did you sign it at that time with an understanding that it should be followed by a formal proof of loss?

A. I cannot answer that question, Mr. Lillick, it is too long ago. I am sure that if the subject were mentioned, I would assume, of course, that a proof of loss would have to be filed. We often file proofs of loss on claims after the claims are paid. With fire companies, that is a very common practice. The assured is often in a hurry for his money, and the companies often pay it before the proof of loss is filed. I do not think the subject was mentioned. It would be taken as matter of

(Testimony of Oscar Sutro.)

course that we would file a proof of loss if one had not been filed.

Q. You say it was taken as a matter of course?

A. I would take [100] it as a matter of course when I signed the receipt that in due season the proof of loss would be filed. It may be that the proof of loss which the company had asked us to sign, and which was not acceptable to you, had already been tendered to us.

Q. Is not that the fact, Mr. Sutro? Of course, it is many, many years ago.

A. I think I can verify that for you.

Q. Yes, I wish you would try to verify that.

Mr. HENGSTLER.—Mr. Lillick has enlightened me on that point, the point that you asked about, Mr. Lillick—

Mr. LILLICK.—Let us first finish with Mr. Sutro, and then we will go into the other matter.

A. (Continuing.) I find a letter on April 25, "The proof and proof of loss have been forwarded to Oregon City office with the request that the latter be executed."

My recollection now is that on the day that the receipt was signed and the money paid, Mr. Barclay, of the Hartford Fire Insurance Company, asked me to sign a proof of loss. That proof of loss was sent to Oregon City and was executed. It had been prepared by the Hartford Fire Insurance Company. It subsequently came to your attention, you representing the Standard Fire & Marine. It was deemed unsatisfactory by you, representing the

(Testimony of Oscar Sutro.)

Standard Fire & Marine, and the proof of loss was re-formed to conform to that form there. That is the reason why in this case the proof of loss was a month later than the actual payment of the money.

I remember that with the check Mr. Barclay on the same day gave me a proof of loss, which we actually sent on and had signed. You had not seen it. Subsequently, it was shown to you, before the execution was completed, and it was changed.

Q. And changed by using the document that is now in evidence, [101] by the rider attached to the ordinary form of their proof of loss?

A. Yes, I am sure that that is the one that was used.

Mr. LILLICK.—That is all.

Redirect Examination.

Mr. HENGSTLER.—Q. Mr. Sutro, with reference to that receipt on the 24th of April, as I understand it from your testimony, the situation was this: You had, for the libelant, two claims against the insurance company, and there was a controversy about those claims, the insurance company denying liability under each one of them, but they finally agreed to pay the smaller one, with the understanding that that should settle the whole indebtedness? Is not that the situation?

Mr. LILLICK.—That is objected to as being leading and suggestive.

The COURT.—Objection overruled.

A. I am not sure that that is a correct statement of the situation, Doctor; I am not at all sure that

(Testimony of Oscar Sutro.)

the Willamette Navigation Company ever made a claim against the Hartford Fire Insurance Company prior to the date of this payment for more than the damage to the paper of the Crown-Columbia. As I remember the situation, the Willamette Navigation Company considered itself liable to the Crown-Columbia Paper Co. for the loss of that paper, and we had either paid that loss or knew that we were going to pay it. I am not sure that we went any further in our claim against the Hartford than the collection of the amount which we either already had paid the Crown-Columbia, or which we knew we were going to pay them. Your question began with the statement that we made two claims against the Hartford—I don't think we ever did at that time.

The COURT.—Q. Everybody knew, didn't they, that a much [102] greater damage had occurred than this amount of \$1100?

A. Yes, but the damage was to the paper of the Willamette Pulp & Paper Company.

Q. But if one were covered by the policy, the other would be?

A. Well, not necessarily, as I understood it; Mr. Lillick disagreed with me on that at that time. The policy, according to the contention of the Hartford Fire Insurance Company, covered neither claim, because our bill of lading did not protect our shippers. That was the contention of the Hartford Fire Insurance Company. It was only because we had a special agreement with the Crown-Columbia

(Testimony of Adam Gilliland.)

that, regardless of the terms of the bill of lading, we, as the ship owners, would pay their loss, it was because we had that special agreement to indemnify the Crown-Columbia that we persuaded the Hartford Fire Insurance Company that the portion of the loss which we had made good to the Crown-Columbia should be reimbursed to us. So far as I know, we never did pay the Willamette Pulp & Paper Company anything, and, consequently, we could not claim against the Hartford Fire Insurance Company.

Mr. HENGSTLER.—That is all.

Mr. LILLICK.—That is all, Mr. Sutro.

Testimony of Adam Gilliland, for Libelant (Recalled).

ADAM GILLILAND, recalled.

Mr. LILLICK.—Q. I think we interrupted the testimony of Mr. Gilliland at the time I had just obtained from Mr. Hengstler the letter dated September 17, 1913, addressed to the Hartford Fire Insurance Company; I ask you whether you remember having received that letter from me, Mr. Gilliland.

A. No, I do not.

Mr. LILLICK.—Will you stipulate, Mr. Hengstler, that the [103] letter was received by the company, according to the stamp, September 17, 1913, at four o'clock in the afternoon?

Mr. HENGSTLER.—That it was received by the Hartford Fire Insurance Company at that time?

Mr. LILLICK.—Yes.

Mr. HENGSTLER.—I stipulate to that.

Mr. LILLICK.—We offer the letter in evidence and ask that it be marked “Libelant’s Exhibit 4.” It reads as follows:

Libelant’s Exhibit No. 4.

(Letterhead of IRA S. LILLICK.)

“San Francisco Sept. 17, 1913.

“Hartford Fire Insurance Co.,

“430 California St.,

“San Francisco.

“Gentlemen:

“Referring to my letter to your Mr. Adam Gilliland, assistant general agent, under date of June 13, 1913, and the statement therein made that as soon as I obtained the bills of lading for the paper mentioned in the claim of the Willamette Pulp & Paper Co. against the Willamette Navigation Co. for its shipment on the steamer ‘Ruth’ I would forward them to you, these bills of lading have just been received and I am forwarding you herewith copies thereof. The originals are subject to your inspection, if you so desire.

“As stated in my letter above referred to, I believe that you are in full possession of all the details with reference to a particular account of the loss, with causes and extent thereof, as well as the nature of the interest of the Willamette Navigation Co. in the property, inasmuch as you have paid the Willamette Navigation Co., under your policy No. 304, the damage suffered by the loss of the paper

of the Crown Columbia Paper Co. The statement of the loss of the Willamette Pulp & Paper Co., (claim [104] for which has been made against the Willamette Navigation Co.) was sent you in my letter under date of June 13, 1913, and this claim for \$5621.85 is of exactly the same character as that of the Crown Columbia Paper Co., so that you are undoubtedly in possession of all of the information necessary to enable you to pass upon it. Under the terms of your policy, loss is agreed to be paid within thirty days after proof thereof, and we shall be glad to receive payment of this loss within thirty days from the date hereof.

“I repeat our offer to furnish you with any further or additional information that you desire with reference to this claim, as well as any further form of proof of loss.

“Yours very truly,

“IRA S. LILLICK,

“Atty for Willamette Navigation Co.”

(The document was marked “Libelant’s Exhibit 4.”)

Mr. HENGSTLER.—What is the object for which you offer this letter, Mr. Lillick?

Mr. LILLICK.—A second link in the chain passing on to the Hartford Fire Insurance Company any information that it might desire or request from us with reference to further proofs of loss, and the statement upon my part, then representing the Navigation Company, that we would furnish the insurance company with anything else that they might desire in connection with the facts.

Mr. Gilliland had asked me for copies of the bills of lading, as I remember it—no, I am wrong about that; I had offered them as soon as I could obtain them, and I had to send North to furnish them. It is tying in to this first letter.

Mr. HENGSTLER.—I object to it on the same grounds. It is not within the 30 days; it is not proof of loss in any sense of the word. I understand that, anyhow, we will not be bound [105] by any statements of fact which are made in these letters.

Mr. LILLICK.—Q. Mr. Gilliland, I refer in that letter to certain bills of lading; have you no recollection of having received those?

A. No, I have not.

Mr. LILLICK.—Mr. Hengstler, if you have them in your file, will you let me have them, please?

Mr. HENGSTLER.—The Bills of Lading?

Mr. LILLICK.—Yes, the bills of lading referred to in the letter.

Mr. HENGSTLER.—I could not tell you where the bills of lading are with reference to this shipment.

Mr. LILLICK.—They should be attached to the original of this letter of September 17, 1913.

Mr. HENGSTLER.—I have bills of lading here.
The COURT.—Have you the originals?

Mr. LILLICK.—They should be at the office. I have a copy here, your Honor. The original of them was never asked for. The defense, as I understand it, with reference to the common carrier part of it, is based in large part upon certain provisions of the

bill of lading. Mr. Hengstler and I can agree, I think, on another copy if they have not the ones I thought would be in their file ready available.

Mr. HENGSTLER.—I have bills of lading here, but I cannot tell whether I have the bills of lading that cover this shipment.

The COURT.—I only have in mind the statement in the letter that the originals were open to their inspection.

Mr. LILLICK.—Yes, but they were never asked for, your Honor. They were in the office subject to their inspection. These others furnished—they were simply copies.

Mr. COOGAN.—I think these are the bills, here.
[106]

Mr. LILLICK.—They are quite as important for you as they are for me.

Mr. HENGSTLER.—There is a set of bills of lading here, but I cannot tell you whether they cover this shipment, or not.

Mr. LILLICK.—We can check them in a minute. This is for 43 rolls, San Francisco “Examiner”—

Mr. HENGSTLER.—No, this is Los Angeles “Examiner.”

Mr. LILLICK.—There were 26 for the Los Angeles “Examiner.”

The COURT.—Is it material, as long as the shipment is paper, if we get one bill of lading that carries the form? Aren't they all the same form?

Mr. LILLICK.—Yes, your Honor. There is no

reason in the world why one cannot be deemed to be the form for all.

The COURT.—I think so. If there is one admitted, you can get the terms out of that particular one. It can be stipulated that that is the form under which all of this shipment was made.

Mr. LILLICK.—Exactly, your Honor.

Mr. HENGSTLER.—We will give you this one.

Mr. LILLICK.—The one that is being offered as an exemplar of all is for 83 rolls, 67", for the Times-Mirror Co. We offer this in evidence. As I understand it, this is by stipulation deemed to be a copy of one that is in the same form as all of the other bills of lading that covered the shipment of the Willamette Pulp & Paper Company on the steamer "Ruth" when this accident happened.

Mr. HENGSTLER.—Yes.

The COURT.—And will the stipulation go to the extent that it is the same form that covered the Crown-Columbia paper?

Mr. LILLICK.—Yes, your Honor, so far as I am concerned.

Mr. HENGSTLER.—I don't know that, but I don't think it [107] makes any difference in this at all.

The COURT.—Maybe not. If it did, I would like to have it settled now.

Mr. HENGSTLER.—If I can find any Crown-Columbia bills of lading, I will hand them to your Honor.

Mr. LILLICK.—It will be appended to your proof of loss. I think you can find it in a moment, can't you? Here is Crown-Columbia Paper Company; I don't know what is in this, but I am perfectly willing to stipulate that you can use this.

Mr. HENGSTLER.—I think that is a shipping order. I can't tell whether that is a bill of lading, or not. I don't want to offer it in evidence, your Honor, but I shall be very glad to let your Honor see what it amounts to.

Mr. LILLICK.—That came from your files. I am willing to stipulate that that was the document under which the Crown-Columbia Paper Company shipment was sent.

Mr. HENGSTLER.—I could not stipulate to it, because I don't know anything about it. I am not interested in the Crown-Columbia Paper Company's shipment.

Mr. LILLICK.—At any rate, the document just handed to the Court was a document appended to the proof of loss made on the Crown-Columbia Paper Company's loss.

Mr. HENGSTLER.—I could not tell you that, either. I don't know whether it was attached to any proof of loss, or not.

The COURT.—Without too careful an examination, these seem to be identical.

Mr. LILLICK.—Then will you mark the second one for identification, at least. The first one is in evidence. The second can be marked for identification.

(The documents were here marked, respectively, "Libelant's [108] Exhibit 5" (in evidence), and "Libelant's Exhibit 6" (for identification).

(Exhibit 5 reads as follows:)

Libelant's Exhibit No. 5.

"Uniform Bill of Lading — Standard Form of
Straight Bill of Lading Approved by the Inter-
state Commerce Commission by Order No. 787.

WILLAMETTE

**"THE OREGON RAILROAD AND NAVIGA-
TION COMPANY.**

Shippers No. —

**STRAIGHT BILL OF LADING—ORIGINAL—
NOT NEGOTIABLE.**

Agents No. —

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading, at OREGON CITY, OREGON, Jan. 11, 193, from Willamette Pulp and Paper Company the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed here-

under shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from — to — is in Cents per 100 Lbs.

If Times 1st : If 1st Class : If 2d Class : If 3d Class : If 4th Class :

| | | | | |
|---|---|---|---|---|
| : | : | : | : | : |
| : | : | : | : | : |

[109]

If 5th Class : If A Class : If B Class : If C Class : If D Class : If E Class

| | | | | |
|---|---|---|---|---|
| : | : | : | : | : |
| : | : | : | : | : |

If Commodity :

:
:
:

(Mail Address—Not for purpose of Delivery.)

Consigned to WILLAMETTE PULP AND PAPER COMPANY.

Destination—San Pedro, State of Calif., County of

——. Route N. CO. and S. F. & P. S. S. CO.

Car Initial —. Car No. —.

| No. Packages. | Description of Articles and Special Marks. | Weight (Subject to Correction). | Class or Check. Rate. Column. |
|------------------|---|---------------------------------------|----------------------------------|
|------------------|---|---------------------------------------|----------------------------------|

| | | |
|-----------|------|--------------------|
| No. Rolls | SIZE | For Printing Paper |
|-----------|------|--------------------|

or

| | | | |
|----|-----|---|---|
| 83 | 67" | " | " |
|----|-----|---|---|

TIMES-MIRROR CO.

Prepay to Portland.

If charges are to be prepaid, write or stamp here,
 "To be prepaid." ———.

Received \$—— to apply in prepayment of the
 charges on the property described hereon.

—————,
 Agent or Cashier.

Per —————.

(The signature here acknowledges only the
 amount prepaid.)

Charles advanced: \$——.

WILLAMETTE PULP & PAPER COM-
 PANY, Shipper.

Per M. G. NOBEL.

A. B. FORD, Purser, Agent.

Per Str. "Ruth."

(This Bill of Lading is to be signed by the Ship-
 per and Agent of the Carrier issuing same.)"

(The reverse side of bill of lading contains the
 following:) [110]

"CONDITIONS.

Sec. 1. The carrier or party in possession of any
 of the property herein described shall be liable for
 any loss thereof or damage thereto, except as here-
 inafter provided.

No carrier or party in possession of any of the
 property herein described shall be liable for any
 loss thereof or damage thereto or delay caused by
 the act of God, the public enemy, quarantine, the
 authority of law, or the act or default of the shipper

or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

[111]

Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only

as agent with respect to the portion of the route beyond its own line.

No Carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the *bona fide* invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower

value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to [112] the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance, that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary coooperage and baling at owners cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and that if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator

charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a [113] public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are

attached to and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification of tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight and [114] all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession

(Testimony of Adam Gilliland.)

shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term 'water carriage' in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be [115] enforceable according to its original tenor."

Q. Mr. Gilliland, do you personally know anything about the facts in the case with reference to the accident to the "Ruth"?

A. My recollection of the incident is not particularly clear, but, in general, I understand that this steamer "Ruth" loaded with this paper either sprang a leak and went ashore, or else stranded and

(Testimony of Adam Gilliland.)

sunk, and the paper was damaged. That is about all I ever heard about it.

Mr. HENGSTLER.—I move that that be stricken out, your Honor, as hearsay and not responsive.

The COURT.—Let it go out, if he knows nothing about it except what he has heard.

Mr. LILLICK.—Q. You had in Portland a surveyor by the name of Honeyman, representing the Hartford Fire Insurance Company, did you not?

A. We employed a man named Honeyman; I never knew that he was a permanent employee.

Q. For this particular loss, however, and in making the survey on the paper this man Honeyman was appointed, was he not, to represent you?

A. My recollection is Mr. Honeyman acted.

Q. You had a report from Mr. Honeyman at the time of the accident, did you not, giving his statement of his having gone out to the wreck and having gone over it?

A. I do not know. May I offer an explanation here? In regard to these preliminary proceedings, they did not come particularly within my province; we had a man who looked after the Marine Department, and so these things might have come in and I not see them. I don't remember having seen a report from Honeyman. My connection with the matter came in closer with it when the settlement was made, and after these preliminary matters were over. [116]

Q. Who is the marine man of whom you speak?

A. Mr. Barclay.

(Testimony of Charles M. Whitney.)

Mr. HENGSTLER.—I have a report here, Mr. Lillick.

Mr. LILLICK.—May I have the report made by Mr. Honeyman?

The COURT.—We will meet at two o'clock, gentlemen.

(A recess was here taken until two o'clock P. M.)
[117]

AFTERNOON SESSION.

Testimony of Charles M. Whitney, for Libelant.

CHARLES M. WHITNEY, called for the libelant, sworn.

Mr. LILLICK.—Mr. Whitney has handed me the original policy.

Mr. HENGSTLER.—Who is Mr. Whitney?

Mr. LILLICK.—Q. What was your connection with the Willamette Navigation Company in 1913?

A. I was employed in the office of the president, Mr. William Pierce Johnson, here in San Francisco.

Mr. LILLICK.—Mr. Whitney has handed me the original policy, being policy No. 304, in the Hartford Fire Insurance Company. I will offer that as our next exhibit.

Mr. HENGSTLER.—I thought you stated this morning, Mr. Lillick, that the original was attached to the libel as an exhibit.

Mr. LILLICK.—I thought it was.

Mr. HENGSTLER.—That was a mistake. A copy is attached to the libel as an exhibit.

Mr. LILLICK.—Yes.

(Testimony of Charles M. Whitney.)

Mr. HENGSTLER.—And that is a copy of this?

Mr. LILLICK.—Yes.

Mr. HENGSTER.—No objection to this.

(The policy was here marked “Libelant’s Exhibit 7.”)

Mr. LILLICK.—Q. Have you made a search of the files of the Willamette Navigation Company for the correspondence exchanged with Henry Hewitt & Co., in Portland? A. I have.

Q. Have you in your hand that correspondence, so far as you have it? A. Yes.

Mr. LILLICK.—These all will be offered, one letter at a time, in connection with the testimony of Mr. Sutro this morning, to show the actual situation with reference to the proof of loss [118] that was made, and the receipt of \$1158.80.

The first one is dated February 24, 1913, addressed to Henry Hewitt & Co., Portland, Oregon, and reads as follows:

Libelant’s Exhibit No. 8.

“Gentlemen: We are advised by Mr. Wm. Pierce Johnson, President of our company and located in San Francisco, that the Hartford Fire Insurance Co. are liable under the Cargo Policy #304 for their proportion of the loss of cargo on the Str. ‘Ruth’ which went aground below the Clackamas Rapids on January 11th, and in accordance with this request we enclose herewith detailed claims amounting to \$5621.85, which he suggests that you

forward to San Francisco office for settlement.

“Yours truly,

“WILLAMETTE NAVIGATION COMPANY.

“By _____.”

It does not appear by whom that was signed.

The COURT.—What is the date of that?

Mr. LILLICK.—February 24, 1913.

The COURT.—Who are Hewitt & Co.?

Mr. LILLICK.—The agents in Portland, Oregon, of the Hartford Fire Insurance Company. That will be admitted, will it not, Mr. Hengstler?

Mr. HENGSTLER.—Yes.

(The letter was here marked “Libelant’s Exhibit 8.”)

Mr. LILLICK.—The next is a letter dated “Portland, Oregon, February 28th, 1913,” from Henry Hewitt & Co. to the Willamette Navigation Co., Oregon City, Oregon, reading as follows:

Libelant’s Exhibit No. 9.

“Gentlemen:—We acknowledge receipt of your letter of the 24th inst., enclosing statement of loss of cargo on the steamer ‘Ruth.’ This comes to us as somewhat of a surprise, as we understood from Captain Crowe that this matter had been closed up with [119] the Standard Marine, their policy covers all the loss, inasmuch as it was specific insurance.

“The statement that you enclosed is not quite clear. When the loss occurred we sent Mr. W. B. Honeyman to the wreck immediately to superintend salvage operations for the Hartford. He was

(Testimony of Charles M. Whitney.)

there two days and returned and informed us that Captain Crowe had been placed in charge by the Standard Marine, the cargo being insured in the Standard Marine specifically.

“We do not know the nature or extent of the interest of the Willamette Navigation Company in this cargo and the claims growing out of the loss, consequently are at a great disadvantage in laying the case before the Hartford’s home office at Hartford, in fact we are so devoid of information that our position is humiliating. Could you not inform us as to the Contracts between yourselves and the Paper Companies on which your claim is based, also the amount and terms of insurance carried on this cargo by other Companies, this information will be required before an adjustment can be made.

“We are anxious to make a speedy and satisfactory settlement of this claim as it is our business to give the very best service to our clients, but unless we have detailed information you can readily see that our hands are tied.

“Trusting that at an early date you will be able to give us the necessary particulars, we are

“Yours very truly,

“HENRY HEWETT & CO.

“(Signed) S. G. JEWETT, Sec.”

(The letter was marked “Libelant’s Exhibit 9.”)

Q. Who is E. K. Stanton?

A. At the time this letter was written Mr. E. K. Stanton was in the employ of the Willamette Navigation Company at its Portland Office. It is my

(Testimony of Charles M. Whitney.)

recollection that he [120] was assistant secretary at the time, although I am not positive about that.

Q. Of the Willamette Navigation Company?

A. Yes.

Mr. HENGSTLER.—This next letter that you handed me to examine, Mr. Lillick, is a letter from an employee of the Willamette Navigation Company to the Willamette Navigation Company; in other words, a letter from the Navigation Company to itself.

Mr. LILLICK.—Yes, and I offer it solely for the purpose of showing the situation with reference to the receipt in full that was given by Mr. Sutro.

Mr. HENGSTLER.—I don't see what bearing it has upon the case.

Mr. LILLICK.—It is as follows:

Libelant's Exhibit No. 10.

“April 29, 1913.

“Mr. Wm. Pierce Johnson, President,

“Willamette Navigation Co.,

“San Francisco, Cal.

“Dear Sir:

“RUTH CLAIM:

“Yours of April 25th with enclosures received for which we thank you. We enclose herewith proof of loss properly executed. We have placed a cross (X) in four places in the margin of this proof of loss where reference is made to loss or damage by ‘fire,’ which wording it would appear should be changed to meet the conditions.

“The last paragraph on page one reads:

“ ‘And the insured hereby claims and agrees to accept from the Hartford Fire Insurance Company by reason of said loss, damage and policy of insurance, the sum of \$1158.80 in full satisfaction of all liability under policy for all loss and damage thereunder by said fire.’ ”

“We presume that the modifications of this clause are so worded that we by the execution of the proof of loss are not signing a complete release which would prevent us making claim for a portion of the Willamette Pulp & Paper Co.’s loss and [121] would like to have you take this matter up with Mr. Sutro and get his opinion before the proof of loss is returned to the Insurance Company.

“Yours truly,

“(Signed) E. K. STANTON.”

“Encl.”

(The letter was marked “Libelant’s Exhibit 10.”)

Mr. HENGSTLER.—That letter is dated April 29th, and refers to a letter from the president, Mr. Wm. Pierce Johnson, evidently to E. K. Stanton, the writer of this letter; this letter is incomplete unless you produce the other letter.

Mr. LILLICK.—I will let you have the entire files that were turned over to me by the company, and you can put the others in if you want to.

Mr. HENGSTLER.—We just want the letter of April 25.

Mr. LILLICK.—I will ask Mr. Whitney if he knows anything about it; it is not among these other letters.

(Testimony of Charles M. Whitney.)

Q. Do you know what was in the other letter, Mr. Whitney?

A. No, I do not, Mr. Lillick, I could not say at this time.

Q. Where did this copy that you have in your hand come from?

A. In our files in our office here in San Francisco.

Q. Have any of these files been withheld from me, to your knowledge?

A. Not to my knowledge.

Mr. HENGSTLER.—Q. Do you know where that letter of April 25 is?

A. No, I do not. If it is not in my files here, I may possibly be able to secure a copy of it from the Portland Office.

Mr. LILLICK.—I will have the witness do that within a day or two.

Mr. HENGSTLER.—We will have no objection to it subject to our inspection of the letter to which this is an answer, but we want to see the other letter.

Mr. LILLICK.—Q. Mr. Whitney, will you be good enough to take [122] this as an instruction: Write to your Portland office for the letter dated April 25, and ask them to return it to me; then, Mr. Hengstler, after submitting it to you it may be filed as an exhibit, if you care to have it. Do you desire to leave that matter in that way?

Mr. HENGSTLER.—Yes, but if it is not sub-

mitted to me, I don't want this letter that is now offered in evidence admitted at all.

Mr. LILLICK.—This letter will be admitted subject to our producing the other letter.

Mr. HENGSTLER.—Yes, and subject to the general objection, also, that it is a letter from an employee of the company to the president of the company, and is clearly self-serving.

Mr. LILLICK.—I next offer a letter dated May 1, 1913, addressed to Henry Hewitt & Co., Portland, Oregon, signed Willamette Navigation Company, by (blank), reading as follows:

Libelant's Exhibit No. 11.

May 1/13.

“Henry Hewitt & Co.,

“Portland, Ore.

“Gentlemen:

“On February 24th we wrote you as follows:

“‘We are advised by Mr. Wm. Pierce Johnson, President of our company and located in San Francisco, that the Hartford Fire Insurance Co. are liable under Cargo Policy #304 for their proportion of this loss of cargo on the Str. “Ruth” which went aground below the Clackamas Rapids on January 11th, and in accordance with his request we enclose herewith detailed claim amounting to \$5621.85, which he suggests that you forward to San Francisco office for settlement.’

to which we will be pleased to have you reply.

“Yours truly,

“WILLAMETTE NAVIGATION COMPANY,

“By _____.”

“June 14/13.

“Retd. by Oscar Sutro.”

(This letter was marked “Libelant’s Exhibit 11.”)

[123]

I next offer in evidence a letter dated May 16, 1913, addressed to Willamette Navigation Co., Oregon City, Oregon, and signed Henry Hewett & Co., by (blank) Secretary. It purports to be a copy.

Mr. HENGSTLER.—I object to that on the ground that it is immaterial and irrelevant.

Mr. LILLICK.—The letter is as follows:

Libelant’s Exhibit No. 12.

“Portland, Oregon, May 16, 1913.

“Willamette Navigation Co.,

“Oregon City, Oregon.

“Gentlemen:

“We are in receipt of a letter from you dated May 1st in which you make inquiry as to the matter of claim under Hartford Cargo Policy No. 304. In this connection we beg to advise that this matter was turned over to the adjuster in San Francisco for settlement and we have had no further work in the matter, and presumed the case had been closed long ago. We are to-day writing to find out

what has been done, and as soon as we receive an answer we shall advise you.

Yours very truly,

“HENRY HEWETT & CO.

“(Signed) By _____, Secy.

“June 14/13.

“Retd. by Oscar Sutro.”

(The letter was marked “Libelant’s Exhibit No. 12.”)

We offer in evidence a copy of a letter dated May 17, 1913.

Mr. HENGSTLER.—The same objection.

Mr. LILLICK.—It is addressed to Henry Hewitt & Co., Portland, Oregon, and reads as follows:

Libelant’s Exhibit No. 13.

“May 17/13.

“Henry Hewitt & Co.,

“Portland, Ore.

“Gentlemen:

“We are in receipt of yours of May 16th, for which [124] we thank you. As soon as you are in receipt of an answer from San Francisco, will be pleased to have you advise us.

“Yours truly,

“WILLAMETTE NAVIGATION COMPANY,

“By _____.”

(The letter was marked “Libelant’s Exhibit 13.”)

We next offer in evidence a copy of a letter dated Portland, Oregon, May 22, 1913, addressed to Willamette Navigation Company, Oregon City, Oregon,

and signed "Henry Hewett & Co., by F. G. Hewett," reading as follows:

Libelant's Exhibit No. 14.

"Portland, Oregon, May 22, 1913.

"Willamette Navigation Co.,

"Oregon City, Oregon.

"Gentlemen:

"Referring to your recent enquiry in regard to the adjustment of loss on the steamer 'Ruth' and liability under Hartford Cargo Policy No. 304, we have to advise that we are just in receipt of a letter from the San Francisco office of the Hartford Insurance Co. which states that on April 24th \$1158.80, the amount of loss under the above mentioned policy, was paid to the Willamette Navigation Co. The draft was handed to your representative in San Francisco, and the Hartford representative states that signed Proof of Loss has not been returned to them and they are still waiting for the same, the draft and proof in question having been delivered a fortnight ago. They also ask that we communicate with you and request that the signed proof be delivered to us as soon as convenient.

"Yours very truly,

"HENRY HEWETT & CO."

"(Signed) By F. G. HEWETT.

(The document was marked "Libelant's Exhibit 14.")

We next offer a copy of a letter dated May 26, 1913, addressed to Henry Hewitt & Co., Portland, Oregon, from the [125] Willamette Navigation Company, reading as follows:

Libelant's Exhibit No. 15.

"May 26/13.

"Henry Hewitt & Co.,

"Portland, Ore.

"Gentlemen:

"Yours of May 22d received. We have written to Mr. Johnson in San Francisco to-day asking that the proof of loss covering the Crown-Columbia Paper Co.'s loss be returned to your San Francisco office as soon as possible. The draft which you refer to amounting to \$1158.00 covers the loss of the Crown-Columbia Paper Co. while our letter of February 24th enclosed copy of claim filed by the Willamette Pulp & Paper Co. for their loss and it is regarding the disposition of this claim that we would like to have your reply.

"Yours truly,

"WILLAMETTE NAVIGATION COMPANY.

"By _____."

(The letter was marked "Libelant's Exhibit 15.")

The rest of the letters that you have, Mr. Hengstler, I do not propose to put in. They are the balance of the file that was handed to me by a gentleman from the office here.

Mr. HENGSTLER.—Correspondence between the same parties?

Mr. LILLICK.—Correspondence between the same parties.

Mr. HENGSTLER.—Will your Honor give us a minute to look these over?

Mr. LILLICK.—I am producing them because it is the whole file; I don't want to put those in.

Mr. HENGSTLER.—We would like to have this letter of March 3 go in.

Mr. LILLICK.—You can offer it.

Mr. HENGSTLER.—As part of the correspondence between these parties, part of which was offered by Mr. Lillick, we offer a [126] letter dated March 3, 1913, from Willamette Navigation Company to Henry Hewitt & Co., Portland, Oregon, reading as follows:

Respondent's Exhibit "B."

"March 3, 1913.

"Henry Hewitt & Co.,

"Portland, Ore.

"Gentlemen:

"Yours of February 28th received. We had also understood from Capt. Crowe that the Standard Marine Insurance Co. would assume the entire cargo loss on the Str. "Ruth" and were as much surprised as you are when we received word from our San Francisco office that your company should also bear a portion of this loss.

"We have no knowledge whatever of the insurance other than that carried in the Hartford Company which is carried on these cargoes, the contracts all being in San Francisco, and in as much as our San Francisco office have requested us to ask you to refer the matter to your San Francisco office, we presume that it has already been taken up

with your office there and suggest that you place the entire matter in their hands.

“Yours truly,

“WILLAMETTE NAVIGATION COMPANY.

“By _____.”

(The letter was marked Respondent’s Exhibit “B.”)

Who, Mr. Lillick, is Captain Crowe? Did he represent the Standard Marine Insurance Company?

Mr. LILLICK.—He was a man who occupied the same position relatively to us as Mr. Honeyman did to your company.

Mr. HENGSTLER.—And who superseded Mr. Honeyman?

Mr. LILLICK.—No, not superseded, by any manner of means; the two went out together, as I understand it, Mr. Hengstler.

Mr. HENGSTLER.—Then we will prove that. We offer a letter dated June 2, 1913, from Henry Hewett & Co. to Willamette [127] Navigation Company, Oregon City, Oregon, reading as follows:

Respondent’s Exhibit “C.”

“Portland, Oregon, June 2, 1913.

“Willamette Navigation Co.,

“Oregon City, Oregon.

“Gentlemen:

“Upon receipt of your letter of May 26th in regard to loss of cargo on steamer ‘Ruth,’ we took up the matter with the San Francisco office of the

(Testimony of Charles M. Whitney.)

Hartford, and they claim that the loss of the Willamette Pulp & Paper Co. was settled and paid by the Standard Marine through J. B. F. Davis, and that no claim was made through your San Francisco representative on the Hartford.

“Will you kindly advise us in this connection if their statement is correct or if they have been in error?”

“Yours very truly,

“HENRY HEWETT & CO.

(Signed) By S. G. PRUITT, Secy.”

(The document was marked Respondent’s Exhibit “C.”)

The next is a letter dated June 3, 1913, addressed to Henry Hewett & Co., apparently in answer to the letter of June 2, and it is signed “Manager,” but there is no signature to it. Who was Mr. McBain, Mr. Lillick?

Mr. LILLICK.—Q. Who was Mr. McBain, in Portland?

A. He was, at the time, Secretary of the Willamette Navigation Company.

Mr. HENGSTLER.—Q. Who was the manager of the Willamette Navigation Company on June 3, 1913, Mr. Whitney?

A. Mr. McBain was secretary and manager.

Mr. HENGSTLER.—This letter of June 3, 1913, is by the manager of the Willamette Navigation Company to Henry Hewett & Co., Portland, Oregon, and reads as follows:

Respondent's Exhibit "D."

"June 3, 1913.

"Henry Hewett & Co.,

"Portland, Oregon.

"Gentlemen: [128]

"Yours of the 2d at hand.

"We will address our San Francisco office this date to ascertain whether the claim of the Willamette Pulp & Paper Co. against us for loss on the Steamer 'Ruth' has been settled by others and withdrawn. Our records show that the claim still stands.

"Yours truly,

"Manager.

"McB/T-CSF."

(The letter was marked Respondent's Exhibit "D.")

Mr. LILLICK.—I might as well put these other two in.

Mr. HENGSTLER.—They only encumber the record, they haven't anything to do with this.

Mr. LILLICK.—I will put in this one.

Mr. HENGSTLER.—Read it in, if you can see any connection at all.

Mr. LILLICK.—Let us put it in. It is dated March 11, 1913.

Mr. HENGSTLER.—It is objected to by me on the ground it is immaterial, irrelevant and incompetent and it is merely encumbering the record.

Mr. LILLICK.—It reads as follows:

(The letter was marked "Libelant's Exhibit 16.")

(Testimony of Adam Gilliland.)

Libelant's Exhibit No. 16.

“Portland, Oregon, March 11th, 1913.

“Willamette Navigation Co.,

“Oregon City, Oregon.

“Gentlemen:

“Replying to your letter of March 3d in regard to damage to cargo on the Steamer ‘Ruth’ and liability under Hartford Policy, we have to state that this matter has been placed in the hands of the San Francisco representatives of the Hartford for adjustment.

“Yours very truly, [129]

“HENRY HEWETT & CO.

“By (Signed) _____,

“Secy.”

Testimony of Adam Gilliland, for Libelant (Recalled).

ADAM GILLILAND, recalled for libelant.

Mr. LILLICK.—Q. As I remember it, Mr. Gilliland, you testified you have no recollection of the statement of the loss of the Willamette Pulp & Paper Company, which I am handing you, and which it is my recollection was attached to the letter that I wrote you under date of June 17, 1913.

A. I have no recollection of that.

Mr. LILLICK.—Mr. Hengstler, have you that in your file?

Mr. HENGSTLER.—What letter is that?

Mr. LILLICK.—It is a copy of a statement of the loss.

Mr. HENGSTLER.—Mr. Lillick, this morning you asked us to produce any reports that Mr. Honeyman made to the respondent company. I deliver to you now the report which he made to us.

Mr. LILLICK.—We offer in evidence the affidavit of W. B. Honeyman, dated May 25; there is no year after it, and the notarial seal has no date upon it. Will you stipulate that this was intended as of May 25, 1913, Mr. Hengstler?

Mr. HENGSTLER.—Yes.

Mr. LILLICK.—It reads as follows:

Libelant's Exhibit No. 17.

“I, W. B. HONEYMAN, being first duly sworn, depose and say that at a time hereafter mentioned, I was acting as cargo surveyor on board the Str. ‘RUTH’ stranded in the Willamette River January 11th, 1913; that on January 13th, at 10 A. M., I went on board the Str. ‘RUTH’ where she lay on the East Bank of the Willamette River about one mile by river below Oregon City, [130] and found her beached with her bow twenty feet on the land and her stern in fifteen feet of water. The water at the stern and covered the paper cargo and was almost to the roof of the deck house; that to the best of my knowledge and belief the vessel had sustained no casualty prior to her beaching, such as stranding or collision, but leaked going through the rapids, her seams having sprung as the result of overloading. I was not notified of any casualty having occurred and as above stated, do not

(Testimony of Adam Gilliland.)

believe any accident had occurred but that the beaching became necessary due to the leakage of the vessel as above specified.

“WM. B. HONEYMAN.

“Subscribed and sworn to before me this 25th day of May.

“L. A. MATHISEN, (Seal)

“Notary Public for Oregon.

“My commission expires Nov. 3, 1919.”

I offer this paper solely for the purpose of showing that the Hartford Fire Insurance Company had notice of the loss, and sent a man out. After the conclusions of Mr. Honeyman that the vessel had sustained no casualty prior to her beaching, such as stranding, or collision, but leaked going through the rapids, her seams having sprung as the result of overloading, I do not offer that and do not wish to be bound by the document in any other way than that it shows the fact that the Hartford Insurance Company had someone at the wreck on the 13th of January, 1913, representing them.

Mr. HENGSTLER.—You are offering the whole affidavit. However, you offer it for a restricted purpose, do you?

Mr. LILLICK.—I offer it for the restricted purpose of showing that your people had notice of the loss.

Mr. HENGSTLER.—I understand your position.

Mr. LILLICK.—Well, if you understand the position, Mr. [131] Hengstler, all right; I do not

(Testimony of Adam Gilliland.)

wish to be bound by the statements in the affidavits, as to its conclusions.

Mr. HENGSTLER.—It is admitted, is it not, that Mr. Honeyman is dead?

Mr. LILLICK.—I don't know that. Mr. Crowe is dead. If you say he is dead, I will take your word for it.

Mr. HENGSTLER.—I think he has died.

Mr. LILLICK.—Q. Do you know, Mr. Gilliland?

A. No, I do not know, but I am under the impression he is dead.

Mr. LILLICK.—All right. Captain Crowe is dead. He was the man we had up there. I simply mention that to show why we have not his testimony?

(The document was here marked "Libelant's Exhibit 17.")

Now, we offer this copy of letter for the sole purpose of showing that Mr. Honeyman was there and representing you, and reported to you the facts as he saw them. This is dated January 21, 1913, and reads as follows:

Libelant's Exhibit No. 18.

"Portland, Oregon, January 21, 1913.

"C. S. Timberlake, Gen. Agent.

"Hartford, Conn.

"Dear Sir:

"Re Steamer 'Ruth' beached Jan. 11, 8 A. M.

"At the request of your agents, Henry Hewett

& Company, on January 13th at 10 A. M. I went on board the steamer 'Ruth' where she lay on the bank of the Willamette about one mile by river below Oregon City, and found her bow 20 feet out on the land, and her stern in 15 feet of water. The owners had already taken off a part of the cargo in good condition, as below noted. The total cargo on board consisted of 395,019 lbs of paper, owned by the Willamette Pulp and Paper Company and the Crown-Columbia Paper Company. [132]

"There was saved in good order.....144,571 lbs.

"There was saved in bad condition....115,507 lbs.

"There was totally lost.....134,941 lbs.

395,019 lbs.

"I ordered the salvors to cast adrift such portion of the cargo as would cost more to recover than the pulp would be worth, its value being but \$5.00 per ton, and the cost of recovering the badly damaged would exceed that sum.

"I directed the salvage work on the 13th and 14th; on the 14th inst. Captain Crowe arrived at the 'Ruth' with a message from Henry Hewett & Company., stating that J. B. F. Davis & Son had appointed him to represent the insurers on the Willamette Pulp & Paper Company's and Crown-Columbia Paper Company's goods and that Captain Crowe would attend to future operations therefore I could return home. Your agents will give you particulars in the matter of insurance of J. B. F. Davis & Son, by which the Hartford escapes lia-

bility other than the enclosed expense bill.

“Truly yours,

(Signed) WM. B. HONEYMAN.”

(The document was marked “Libelant’s Exhibit 18.”)

Mr. HENGSTLER.—Mr. Lillick, in connection with this letter I want to show you a letter that has a close connection with the letter of January 21, 1913, and which I will introduce in evidence afterwards, but I think it will simplify things and expedite the trial if it is offered now.

Mr. LILLICK.—I have no objection to your offering it out of order, Mr. Hengstler.

Mr. HENGSTLER.—I offer this letter of January 22, 1913, by Henry Hewett & Co., to Mr. C. S. Timberlake, General Agent, Hartford, Conn. He is the same gentleman to whom the last report was made, and he is the general agent of the defendant insurance company. It reads: [133]

Respondent’s Exhibit “E.”

“Portland, Ore. January 22, 1913.

“Mr. C. S. Timberlake, General Agent,

“Hartford, Conn.,

“Dear sir:

“Steamboat ‘Ruth.’

“Referring to our letter of January 14th it is now necessary for us to explain that after Mr. Wm. B. Honeyman had directed Salvage operation on cargo of above craft for two days, Captain Crowe was notified by the Standard Insurance Co’s. Manager in San Francisco to attend to the business.

"It now appears that the Willamette Pulp & Paper Company and Crown Columbia Paper Company, owners of the cargo, were insured under contract with the Standard and that our insured were erring on the safe side when they notified us that there was a loss under your policy. We of course withdrew as soon as we learned about this direct insurance, and can at present see no reason why you should be asked to contribute any part of the loss. We presume that under the circumstances Mr. Honeyman's bill for services will be in order.

"Very truly yours,

(Signed) "HENRY HEWETT & CO."

(The letter was marked Respondent's Exhibit "E.")

Mr. LILLICK.—I object to that letter as hearsay and not binding upon the libellant, and not in any way covering any of the issuance of the case.

Mr. HENGSTLER.—It clearly explains the previous letter.

The COURT.—Let it go in.

Mr. LILLICK.—Mr. Hengstler, you have been unable to find, have you, the proof of loss Mr. Sutro testified he made out for the \$1,158.80?

Mr. COOGAN.—We have that here. [134]

Mr. LILLICK.—We offer in evidence the proof of loss which was testified to by Mr. Sutro, and which is referred to in the correspondence that has been read to the court, this proof of loss having been furnished me by Mr. Hengstler at my request.

Mr. HENGSTLER.—I wish to state the objection to the introduction of this proof of loss on the ground that it is immaterial, irrelevant and incompetent; the date of it shows that it was made in the end of May or the beginning of June, doesn't it, Mr. Lillick?

Mr. LILLICK.— I didn't look at the date. It is the proof of loss that was shunted back and forth.

Mr. HENGSTLER.—I don't want it introduced as any proper proof of loss under the policy.

Mr. LILLICK.—The money was paid under it.

Mr. HENGSTLER.—The money was paid long before that; you admit that, don't you?

Mr. LILLICK.—The money was paid, under Mr. Sutro's testimony, on April 24.

Mr. HENGSTLER.—And this shows that it was received at the home office on May 27.

Mr. LILLICK.—You admit that Henry Hewett & Co., are the agents of the Hartford Fire Insurance Company in the City of Portland?

Mr. HENGSTLER.—Yes.

Mr. LILLICK.—This reads as follows:

Libellant's Exhibit No. 19.

“Amt. \$ ——

“PROOF OF LOSS.

“To THE HARTFORD FIRE INSURANCE COMPANY of Hartford, Conn.

“By your Cargo Policy of Insurance No. 304 issued by THE HARTFORD FIRE INSURANCE COMPANY of Conn., at your Agency at Portland,

Or., said insurance commencing at 12 o'clock, noon [135] on the 10th day of May, 1912 and terminating at 12 o'clock, noon on the 10th day of May 1913, you insured Willamette Navigation Co., a Corp., against loss and damage by, ~~fire~~ as therein expressed, to the amount of Twenty Thousand (20,000) Dollars, according to the terms and conditions printed in said Policy, the written portion of said Policy and all written or printed conditions, endorsements, provisions, agreements, assignments and transfers endorsed thereon, or added thereto, are as follows:

“At and from Oregon City, Oregon, to ports and places in the Willamette and/or Columbia Rivers and tributaries, and from Portland, Oregon, and port and places in the Willamette and/or Columbia Rivers and tributaries to Oregon City, Oregon, direct or via ports and places. Warranted not to use ports and places below Astoria or above Cascade Locks on the Columbia River or above Pulp Siding on the Willamette River.

“This policy also covers property while contained on Ainsworth Dock in the City of Portland, Oregon, for a period of twenty-four hours after discharge from vessel, free from average.

“This Company under the terms and conditions of this policy is not liable in case of total, or partial loss, or both combined, of any one cargo while on board steamers ‘Ruth’ and/or ‘N. R. Lang’ going down the Willamette or Columbia River for an amount in excess of \$8000 and going up the Willa-

mette or Columbia Rivers in an amount in excess of \$2000.

“Waranted free from particular average under five per cent (5%) but to include salvage and general average charges.

“Attached to and forming part of Cargo Policy No. — issued through the Marine & Transportation Department of the Hartford Fire Insurance Company, Hartford, Connecticut, but not valid unless countersigned by HENRY HEWETT & COMPANY, Agents, [136] Portland, Oregon.

“_____,
“Agents.

“Loss, if any, payable to _____.

“The total insurance and agreements for insurance, verbal or written, valid and/or invalid, covering on said property or any part thereof, at the time of the loss, including the above-mentioned Policy, was Twenty Thousand Dollars, and no more. See apportionment sheet or Schedule of Other Insurance attached hereto.

“NOTE.—If all policies and agreements for insurance are not entirely concurrent, make schedule of additional Insurance, giving name of each Company, and the entire written portion of each policy, and all written or printed conditions, endorsements, provisions, agreements, assignments and transfers endorsed thereon or added thereto.

“A loss occurred on the 11th day of January A. D. 1913, at about the hour of — o’clock, — M., by which the above property so insured was

destroyed or damaged, as herein set forth; and which originated as follows:

“Stranding of Steamer ‘Ruth’ on bar in Willamette River on trip from Oregon City to Portland.

“The cash value of the property belonging to and owned by the Crown-Columbia Paper Company at the time of loss, the loss and damage on the same for which claim is hereby made, the total insurance upon said property, the total claim for loss under the entire insurance on said property and the insurance and claims under this policy upon said property belonging to and owned by the Crown-Columbia Paper Company is.....\$1158.80.

“And the insured hereby claims and agrees to accept from the Hartford Fire Insurance Company by reason of said loss and [137] damage to said property belonging to and owned by said Crown-Columbia Paper Company the sum of \$1158.80, in full satisfaction of all liability under said policy for said loss and damage to said property belonging to and owned by said Crown-Columbia Paper Company.

“The amount of sound value herein stated does not exceed the cash market value at the time of the said loss of the said property so damaged and so destroyed. The said property belonging to and owned by said Crown-Columbia Paper Company on which this claim for loss is made belonged to and was owned by said Crown-Columbia Paper Company under an agreement with the Willamette Navigation Company, under which the latter Company assumed responsibility for marine perils,

and under which said last-mentioned company has paid said Crown-Columbia Paper Company.

“That said loss did not originate by any act, designed or procurement on the part of assured, nor on the part of any one having any interest in the property insured, or in the said Policy of Insurance, nor in consequence of any fraud or evil practice done or suffered by assured. Nothing has been done by or with assured’s privity or consent to violate the conditions of the Policy or to render it void; and no articles are mentioned herein but such as were in the building damaged or destroyed, and owned by and were in the possession of the said assured at the time of the said fire. No property saved has been in any manner concealed, and no attempt to deceive the said Company as to the extent of said loss or otherwise has in any manner been made. Any other information that it may be in assured’s power to give will be furnished by assured, if required, and considered a portion of these proofs.

“It is furthermore understood and agreed that all bills, [138] invoices, schedules and statements made by the assured, and attached to this Proof of Loss, are to be incorporated into this proof, and are hereby duly sworn to and made a part thereof.

“It is agreed by claimant that the furnishing of this blank, or making up proofs by this Company’s Adjuster, is not to be considered as a waiver of any rights of this Company.

“Witness our hand at Oregon City this 28th day of Apr. 1913.

“WILLAMETTE NAVIGATION COMPANY,

“By E. KENNETH STANTON,

Auditor.

“Personally appeared E. Kenneth Stanton, signer of the foregoing Statement, who made solemn oath to the truth of the same, and that no material fact is withheld that the said Company should be advised of, before me this 28th day of April, 1913.

“B. T. McBAIN,

“Notary Public for Oregon.”

[Endorsed]: “Claim No. ——. Proof of Loss. The Hartford Fire Insurance Co. of Hartford, Conn. Palache & Hewitt General Agents. Assured Willamette Navigation Co. Agency Portland, Or. Policy No. Cargo #304. Amount of Policy, \$20,000. Amount claimed \$1158.80 Amount awarded, \$——. Date of Loss, Jany. 11/13. Proofs Received, ——. Date of Payment, ——. Adjuster, ——.” (In rubber stamp:) “Hartford Fire Ins. Co. Received June 2, 1913. Answered ——. J. D. Cail, Asst. G. A.” (Also bearing time stamp of Palache & Hewett, dated May 27, 1913.)

(The docket was marked “Libelant’s Exhibit 19.”)

You may take the witness, Mr. Hengstler.

Mr. HENGSTLER.—I expect to recall Mr. Gilliland as a witness on our behalf. I think it is best to let Mr. Lillick finish his case. I have no cross-examination of the witness. [139]

Mr. LILLICK.—We rest.

Testimony of Adam Gilliland, for Respondent (Recalled).

ADAM GILLILAND, recalled for the respondent.

Mr. HENGSTLER.—Q. Mr. Gilliland, you were in charge of the marine business, or the Marine Department of the Hartford Fire Insurance Company at the time when the accident to the “Ruth” and the subsequent negotiations with the Willamette Navigation Company occurred, were you not?

A. Not directly manager of the Marine Department; they had a man operating that department other than myself. My connection with this matter arose owing to the fact that I had general charge of fire loss adjustments for the Hartford, and when this claim developed I was consulted about it.

Q. But you attended to this business, did you not, for the Hartford Fire Insurance Company?

A. Yes.

Q. Was there ever filed in the office of the Hartford Fire Insurance Company, the respondent corporation, any writing on the part of the Willamette Navigation Company, signed by the Willamette Navigation Company, giving what would be a proof of loss, and stating the loss which the Willamette Navigation Company claimed with reference to the accident which happened to the paper on the “Ruth.”

Mr. LILLICK.—We object to that as calling for the conclusion of the witness on a pure question of

law. Perhaps we may save time by a stipulation I am willing to make, that in so far as our records disclose the facts, nothing has been filed by us with the Hartford Fire Insurance Company, other than the letters that have been exchanged, and the single [140] statement of the loss which, by the way, has not yet been furnished me, as being attached to that letter. I will have to ask the Court's permission to testify to that, myself.

Mr. HENGSTLER.—It is not necessary for you to testify to it. I told you that if you say that statement was attached to that letter I would admit it.

Mr. LILLICK.—The only difficulty about it is that it may be in a different form. I had it copied in my office and had it attached to my letter. I know that. It would help if you could give me the original. It is only that I am speaking from my recollection, and it is not safe to do so after so many years. This is it. Now, if you will let me put that in, there will be no question about it, and I will stipulate with you that nothing but these documents that I have offered in evidence were filed by us; in other words, my proof of loss is a proof of loss that is made up of the facts that the Hartford Fire Insurance Company had furnished it by Mr. Honeyman, and by the information that we passed it in the correspondence that was exchanged. That will be my argument. Will you be satisfied with that stipulation?

Mr. HENGSTLER.—I would like to have you stipulate to this, that there are—

Mr. COOGAN.—Here are two different forms of that statement. The figures are the same, but the substance is a little different. Which one of those two do you think you sent?

Mr. LILLICK.—This came from my files. They are the same thing, I think, only in a little different form. We will put this one in. Then it may be stipulated that this document is now offered in evidence, which will be Libellant's Exhibit 20, and was the statement of the loss of the Willamette Pulp & [141] Paper Company appended to my letter addressed to Mr. Gilliland under date of June 13, 1913; other than that, the Willamette Navigation Company filed no other statement or no other proof of loss except what we will contend is made up of the first statement on the \$1158.80 and the other documents. Does that cover it, Mr. Hengstler?

Mr. HENGSTLER.—Yes, it covers it so far as it goes. I want to ask you for a further stipulation, so as to avoid any testimony with reference to that: Will you admit, Mr. Lillick, that no statement was made stating the cause or the extent of the accident?

Mr. LILLICK.—I would be admitting, Mr. Hengstler, what I am intending to argue to the Court was done, because my argument will be, on the question of proof of loss, that your own man, Mr. Honeyman, went out, knew exactly what the situation was, and reported it to you; and that the

object of a proof of loss is to investigate for yourself, if you care to; and that following that nothing was filed in the Hartford Fire Insurance Company by the Willamette Paper Company other than what the Court has before it now in the various letters that have been offered, and the other documents that are before it.

Mr. HENGSTLER.—I would like a particular admission also with reference to this, that no statement of any nature was made by your company respecting the nature of the interest of the Willamette Navigation Company in the property.

Mr. LILLICK.—My contention in the argument, Mr. Hengstler, will be that formal proofs of loss were waived by the company by their denial of liability; that would cover all of what you have in mind now by picking out separate clauses in the context of the paragraphs of the policy. [142]

Mr. HENGSTLER.—In other words, do you admit that no such statement was made?

Mr. LILLICK.—No, I do not, because the argument will be made—

Mr. HENGSTLER.—I am not asking you for what argument you are going to make, but I mean to the effect that any statement was ever furnished to the respondent company of the nature of the interests insured in the property.

Mr. LILLICK.—I will not admit that. You will have to put in other proof about that if you feel that you can by negation prove it.

Mr. HENGSTLER.—Mr. Lillick, will you admit that no statement was ever made as to what other insurance or insurances there was or were upon the property at the time of the loss except the statement I drew out by the interrogatories in our answer and which drew forth a verified answer on your part?

Mr. LILLICK.—No, Mr. Hengstler, that is not the fact, because there is a letter which was introduced with the file we have before the Court now saying there was no other insurance, and, as a matter of fact, there was no other insurance. The fact is, Mr. Hengstler, that the Standard Marine Insurance Company had no insurance policy for the Willamette Navigation Company; the Standard Marine Insurance Company had a policy of Insurance in the Willamette Pulp & Paper Company. We did not insure the Willamette Navigation Company, and there never has been a policy issued by the Standard Marine in the name of the Willamette Navigation Company.

Mr. HENGSTLER.—But you had a policy insuring the Willamette Pulp & Paper Company.

Mr. LILLICK.—Yes.

Mr. HENGSTLER.—And, as a matter of fact, Mr. Lillick, you [143] admit, do you not, that under that policy the Standard Marine Insurance Company paid the full loss to the Willamette Pulp & Paper Company.

Mr. LILLICK.—No, they did not. Now, you are going into a question that I don't know that

the Court would allow you to go into. It was paid under a form of loan.

Mr. HENGSTLER.—I am not asking you about the form. Was it paid?

Mr. LILLICK.—Categorically, no, it was not. There was no payment made under the insurance. There was no insurance carried by the Willamette Navigation Company in the Standard Marine Insurance Company.

Mr. HENGSTLER.—But the Willamette Pulp & Paper Company was paid the full amount of this loss as a loan?

Mr. LILLICK.—Yes, as a loan.

Mr. HENGSTLER.—What are the conditions of that loan?

Mr. LILLICK.—We produce the loan receipt under which the Standard Marine Insurance Company paid the Willamette Pulp & Paper Company the amount set forth in the receipt.

Mr. HENGSTLER.—The amount is \$5531.85, and it is dated February 28, 1913.

Mr. LILLICK.—Will you offer that in evidence, Mr. Hengstler, as it is idle for me to make admissions of the character I am making unless the Court has before it the character of the receipt. Do you offer it?

Mr. HENGSTLER.—No, I am satisfied.

Mr. LILLICK.—I refuse to answer another question in the way of a stipulation.

Mr. HENGSTLER.—I am satisfied with the payment having been made. [143½]

Mr. LILLICK.—Then I have to repeat that no insurance was carried. The payment was made as a loan. Of course, you know, as well as I do, the law obtaining as to that kind of a receipt. All right, Mr. Hengstler, go ahead.

The CLERK.—Do you offer that as one of your exhibits, Mr. Lillick?

Mr. LILLICK.—I am rather at a loss to know how to offer it. I wanted it offered in connection with the question Mr. Hengstler asked me.

Mr. HENGSTLER.—You offered it in evidence.

Mr. LILLICK.—You are asking me questions, and I am answering them, as if I were on the witness-stand, and I produce a paper and you refuse to accept the paper and offer it in evidence; I must, therefore, in order to have it before the Court, offer it.

The COURT.—Well, the Court will introduce this for its own information.

Mr. LILLICK.—I offer it, your Honor. Before calling it to your Honor's attention, however, I desire to have the other paper that I referred to just a few moments ago marked "Libelant's Exhibit 20."

(Libelant's Exhibit 20 is as follows:)

Libellant's Exhibit No. 20.

"WILLAMETTE PULP AND PAPER COMPANY.

"STATEMENT LOSS—STEAMER 'RUTH.'

Original Amount Shipped:

| | | | |
|-----|-----------|-----------------------------|---------|
| 43 | Rolls 49¾ | San Francisco Examiner..... | 29932# |
| 60 | " | " | 61906 |
| 107 | " | Call, Chron..... | 113213 |
| 83 | " | Times Mirror..... | 86458 |
| 26 | " | L. A. Examiner..... | 27030 |
| 6 | " | " | 3077 |
| | | | 321616# |

Less amount recovered and taken to Portland:

| | | | |
|----|-----------|---------------------|---------|
| 3 | Rolls 33" | L. A. Examiner..... | 1473# |
| 42 | " | Chron. | 43909 |
| 17 | " | 49¾ S. F. Exam..... | 12835 |
| 46 | " | " | 47396 |
| | | | 105613# |

[144]

216003# at \$2.50 \$5400.08

\$5400.08

(Forward)

Less Salvage on amount actually returned to mill as
per agreement with Capt. Albert Crowe, Sur-
veyor:

93½ Long Rolls at 1000# 93500#
7½ at 700# 5250

246.88

98750# at \$5.00 per ton

Lost overboard 117253#

\$5153.20

Services of Str. "N. R. LANG" and crew removing dam-
aged paper and returning to mills as per certified
copy of W. N. Co. invoice attached.....

256.25

Services of crew of Str. "Ruth" as per invoice attached

20.70

Meals served to officers and Crew by Str. "N. R. LANG"—

51 meals at 25¢

12.75

Services of Captains Young and Hegdale supervising

work 2½ days

28.70

| | |
|--|-----------|
| Rental of Willamette Pulp & Paper Co.'s barges two days at \$10.00..... | \$20.00 |
| Time of barge foreman and crew assisting in unloading of the cargo..... | 40.25 |
| Services of Capt. Crowe, Surveyor, superintending Salvage of goods and sale of same: | |
| 5 days' services of self..... | \$75.00 |
| 2 " " " help | 8.00 |
| Expenses | 7.00 |
| | <hr/> |
| | \$5621.85 |

(The document was marked "Libelant's Exhibit 20.")

("Libelant's Exhibit 21" reads as follows:)

Libelant's Exhibit No. 21.

"San Francisco, February 28, 1913.

"Standard Marine Insurance Co.,

"#507 Montgomery Street,

"San Francisco.

"Gentlemen:

"S. S. 'Ruth.'

"For and in consideration of your advancing to us the sum of \$5531.85, receipt of which is hereby acknowledged, as a loan to be repaid, without interest, as recovery is effected from [145] the carriers in respect of the merchandise hereinafter referred to, we hereby agree to make claim against the carriers, and, or, bailees of the said merchandise in whose hands the said merchandise received damage, and upon receiving payment from them we hereby undertake to refund to you whatever is recovered. This is upon the express understanding and agreement that you are to be responsible for all costs, attorneys' fees and expenses incurred in connection with the said claim.

"The merchandise above referred to is:

Less Salvage on amount actually returned to mill as
per agreement with Capt. Albert Crowe, repre-
sentative of Standard Marine Insurance Co.:

| | | |
|-----------------------------|-------------------------|-----------|
| 93½ Long Rolls @ 1000#..... | 93500# | |
| 7½ ¾ “ @ 700 | 5250 | |
| | <hr/> | |
| | 98750# @ \$5.00 per ton | \$246.88 |
| | | <hr/> |
| | | \$5153.20 |

Lost overboard 117253#

Services of Str. “N. R. Lang” and crew removing dam-
aged paper and returning to mills as per certified
copy of W. N. Co. [146] invoice attached.....
Services of crew of Str. “Ruth” as per invoice attached..
Meals served to officers and crew of Str. “N. R. Lang”—
51 meals @ 25¢.....

256.25
20.70
12.75

Services of Captains Young and Hegdale supervising
 work 2½ days.....
 Rental of our barges 2 days @ \$10.00.....
 Time of Barge foreman and crew assisting in unloading
 of the cargo.....

\$28.70

20.00

40.25

 \$5531.85

“Yours very truly,

“WILLAMETTE PULP & PAPER CO.,

“By F. G. WIGHT, Secy.”

(The letter was marked "Libelant's Exhibit 21.")

Mr. HENGSTLER.—Mr. Lillick, did I understand you correctly to say you were not willing to make any further stipulations because I did not offer a paper in evidence?

Mr. LILLICK.—I am anxious to have the Court have the facts. I thought we could submit this to the Court by stipulation.

The COURT.—I suppose it may be taken for granted that the Willamette Pulp & Paper Company received \$5500 under that agreement, and under a policy of insurance issued by the other company.

Mr. LILLICK.—That is it exactly. I would like to have this statement put in, that the amount paid the Willamette Pulp & Paper Company under that form of receipt was \$5531.85, which does not include a charge of \$90 for the services of Crowe as a surveyor, which would make it a total of \$5621.85.

Mr. HENGSTLER.—That shows in the paper, itself. What I wanted particularly, Mr. Lillick, was this, that none of these so-called proofs or statements were made within thirty days [147] from the time when this accident happened.

Mr. LILLICK.—No, I cannot admit that because the letters, as they are before the Court, with the testimony of Mr. Sutro, cover the entire situation.

Mr. HENGSTLER.—Q. Mr. Gilliland, did you, within thirty days from the time of this accident,

receive any writing from the Willamette Navigation Company containing any particular account of the accident or stating the causes of the accident, or the extent of the accident, and the nature of the interest of the insured in the property, or what other insurance of insurances there was or were on the property at the time of the loss? Did your office, or your company, receive any such statement within thirty days after the accident? A. No—

Mr. LILLICK.—Just a minute, Mr. Gilliland. Your Honor, I don't want to make any captious objections; the witness was first asked by Mr. Hengstler whether the Willamette Navigation Company had filed such a statement, and then, at the end of the question he is asked whether any such statement had been filed. I object to that on the ground that the testimony already adduced shows definitely what the situation was in respect to that. Mr. Gilliland can only know what went on down here in San Francisco and can quite honestly say no; but Henry Hewett & Co., of Portland, were the agents of the Hartford Fire Insurance Company up in Portland, and were attending to the matter of this case up there.

Mr. HENGSTLER.—Why don't you admit that no attempt was made to furnish such proof within thirty days?

Mr. LILLICK.—Because I do not think that is true. I think the truth is that that was furnished. I don't mean that any statement of the insurance was shown, other than as shown by the letters.

Mr. HENGSTLER.—Any statement containing any of the facts [148] which are called for under what I have just read, under the terms of this policy. None of your letters which you introduced in evidence were written within thirty days after the accident; most of them were written long after the accident. Why don't you admit that within thirty days no such statement was given to the company?

Mr. LILLICK.—Either you misunderstand me or I misunderstand you. I say you are just asking the witness for a conclusion of law. I say, open-handedly, that nothing other than what is before the Court now has been furnished by us, and these facts speak for themselves.

The COURT.—Then this is the situation: Unless the matters inquired of now by Dr. Hengstler are included in these documents and letters already presented, and the proofs offered by the libelant up to this time, such has never been furnished to the company.

Mr. LILLICK.—That is it, exactly.

Mr. HENGSTLER.—Provided that your Honor considers this evidence as competent evidence.

The COURT.—Well, if they don't prove it they don't prove it. Other than this, nothing has been done by the libelant.

Mr. LILLICK.—That is the fact.

Mr. HENGSTLER.—Q. Did you ever receive any affidavit from the master of the "Ruth," or any statement verified by the oath of the master

(Testimony of Adam Gilliland.)

of the "Ruth," within thirty days after the accident? A. No.

Q. With reference to the receipt that was given to the company by Mr. Sutro, you had the negotiations with Mr. Sutro personally, did you not?

A. Yes.

Q. I show you a document marked Respondent's Exhibit "A": Were [149] you present when this document was executed? A. Yes.

Q. Will you tell the Court the circumstances preceding the execution of the document, and the circumstances under which it was executed?

A. We were presented with the statement from the office of the Navigation Company, or the paper companies—I think they occupied a joint office, I am not sure, but there was a memorandum showing the number of rolls of paper destroyed, and the value, one of the Willamette Pulp & Paper Company, and another for the Crown-Columbia Paper Company; the sum of the two, I imagine, was between \$5000 and \$6000; I am not sure of the amount. We took the subject up with Mr. Sutro, as the attorney representing the assured, the Willamette Navigation Company, and all of our negotiations were carried on with him. I may remark here that Mr. Sutro is a personal friend of both Mr. Palache and Mr. Hewett, who were the general agents of the company—

Q. Here in San Francisco?

A. Here in San Francisco, and also an acquaintance of mine, but not on the same terms as with

(Testimony of Adam Gilliland.)

those two gentlemen. The company did not concede any liability, although it may not have denied it; it expressed doubt—particularly our home office expressed doubt about any liability existing under that contract under the conditions as they then existed. The thing dragged along for a while, and, finally, the proposition came—I think Mr. Sutro was in the office of Palache & Hewett, and I was called in, and he agreed that if we would pay the amount set down there, \$1180, whatever was due the Crown-Columbia Paper Co., he said that he would call the thing square. I set to work and made up the paper on that basis. I made up this receipt and wrote a draft, and took it in to Mr. Sutro and paid him. Subsequently, I thought [150] it would be desirable to complete our files by having a proof of loss, just as a matter of form. I made up a proof of loss, after all this was completed, and sent it in, and it took quite a length of time to get it back; there were additions made to it. I think I met Mr. Sutro on the street and asked him why all these pasters were on the proof of loss, and he said, “Well, that is something that Mr. Lillick wanted put on.” Mr. Sutro was very well satisfied to make the compromise settlement on that basis; he so expressed himself verbally, and also through correspondence with Mr. Hewett. He complimented the company on its attitude. On the subsequent proceedings, which culminated in this suit being brought, I asked him how such a thing could happen, and he

(Testimony of Adam Gilliland.)

said that he was placed in a very embarrassing position, that it was entirely against his wishes and desires, but he was in quite a dilemma. And I told him we had nothing to offer on the subject, that he understood the ethics of the case as well as I did, and he could do as he pleased about signing what is termed the complaint, or libel. He didn't want to sign the libel. I told him he could do as he pleased about that, that I was not going to ask him not to, that it was left entirely to himself.

Q. When this money was paid by you to Mr. Sutro, what was your understanding with reference to its effect on the claim of the Willamette Navigation Company?

A. It was all one claim. The claims were not distinguished. It was one sum they were obtaining from us. The only reason why the claim was compromised at that figure was because it was suitable for the purpose of the Willamette Navigation Company. It might just as well have been settled on a basis of \$1000, or \$1500, or any other sum, but as that was the amount they would probably have to pay, [151] we assumed that was the reason they named that amount as the compromise. But it was not a compromise of the claim of the Crown-Columbia, it was a compromise of the whole claim under that policy. I understood it so, and I am sure Mr. Sutro understood it so, our general agents understood it and our Eastern Office understood it.

(Testimony of Adam Gilliland.)

The COURT.—Let me see that, please. May I inquire whether the claim of the Crown-Columbia Company exceeded this amount?

Mr. LILLICK.—The Crown-Columbia claim was exactly \$1158.80.

The COURT.—The payment of that in full would hardly be a compromise.

Mr. LILLICK.—It would not be a compromise on that. Of course, we will argue that later. An attorney would not have a right to compromise a claim of \$5000 and odd for \$1158. My contention will be that this was a payment in full of the Crown-Columbia's claim. It is borne out by the proof of loss. The whole theory of my case depends on the statement that this was a payment of the Crown-Columbia's claim, and that the Willamette Pulp & Paper Company's claim is a separate and distinct amount.

The COURT.—Of course, that might be true. If the claim that you say was settled by this was settled in full, it would hardly be regarded as a compromise settlement. However, that is a matter to be taken up later.

Mr. LILLICK.—Yes, that is a matter of argument.

Mr. HENGSTLER.—You may take the witness.

Cross-examination.

Mr. LILLICK.—Q. Mr. Gilliland, I think you said that when [152] the claim was first presented it was for a larger amount; what was that larger amount?

(Testimony of Adam Gilliland.)

A. I could not tell you. I got the figures either from the bookkeeper or some clerk. I remember paying one visit down to the office of the Paper Company on Montgomery street, and they had figures there showing the loss, both to the Crown-Columbia and to the Willamette Pulp & Paper Co., but what the individual items were, or the aggregate, I could not say. I have no knowledge as to where that memorandum is at the present time.

Q. That was before your payment of the amount in April? A. Yes.

Q. About when was it?

A. I suppose in March. That was practically on the basis of our conversations with Mr. Sutro—whatever those figures were.

Q. When did you first hear about the loss from your Northern office?

A. I could not tell, but I suppose it was within a very short period after the accident occurred; it naturally would be.

Q. Would you say within a week?

A. Within a week, I should think, yes.

Q. There is no doubt in your mind, at all, is there, that the Hartford Fire Insurance Company had in hand a definite statement of the \$1158.80 and the \$5621.85 immediately after the loss?

A. How many weeks after the loss, I cannot say, but we had a definite statement and figures written on the typewriter, two sets of figures presented to us, as to what the damage was there.

(Testimony of Adam Gilliland.)

Q. And that had been sent on to your home office, had it not?

A. It may have been, and it may not. I have no recollection of it. I know that papers of any particular importance we forward.

Q. Upon what did you base your answer a few minutes ago to Mr. [153] Hengstler that your home office expressed doubt about the balance of the claim?

A. They expressed doubt about the whole claim. When this was paid, we wired them that we were going to compromise on this figure, and they wired, "For business purposes only," and not on any other understanding would they allow us to do it.

Q. Have you that letter? A. Yes.

Mr. HENGSTLER.—There are a lot of letters here, Mr. Lillick.

Mr. LILLICK.—I want the first letter from the home office covering this loss, in which Mr. Gilliland says they expressed some doubt about this matter.

The COURT.—Gentlemen, for a case where there are no contested facts, it seems to me this is the longest one I have ever had anything to do with.

Mr. HENGSTLER.—The correspondence that has been interjected in the case has taken up all of the time. If Mr. Lillick had served upon me a notice to produce, we would not have had to spend so much time searching out these different letters.

Mr. LILLICK.—Well, your Honor, it has not taken me so very long after I have finally suc-

(Testimony of Adam Gilliland.)

ceeded in getting just what I wanted from the other side.

Mr. HENGSTLER.—I think this is the letter you want.

Mr. LILLICK.—This letter is dated March 20, 1913.

Q. Would you say that this is the first communication you had from your home office on the matter?

A. No. I could not tell that. I have no way of recollecting particular dates, at all. I have not seen that file since it was turned over to the attorneys.

Q. You remembered, however, the talk you had with Mr. Sutro, and about the receipt, and about his being at your office in April? A. Yes. [154]

Q. Are you not able to place the exchange of views had between you and your home office as before that date?

A. Well, I express the general view that I know that at the time the payment was made we got an answer by wire from them saying that the compromise was all right, but it must be done, not conceding any claim, but simply as a business proposition.

Mr. LILLICK.—I offer this letter in evidence as the letter Mr. Hengstler has just handed me. It reads as follows:

Libelant's Exhibit No. 22.

(Letterhead of HARTFORD FIRE INSURANCE
COMPANY.)

"Hartford, March 20, 1913.

"Adam Gilliland,

"Assistant General Agent,

"San Francisco, California.

"Dear Sir:

"Willamette Navigation Company.

"We have for acknowledgment your communication of March 14th confirming your night letter of that date, and enclosing copy of the Standard Marine Insurance Company's policy which is issued in the name of the Willamette Pulp & Paper Company. Our understanding of this matter is that the Willamette Navigation Company owned no cargo on the steamer 'Ruth' on January 11th when she beached about a mile below Oregon City, that the cargo of paper consisting of 398,019 pounds was owned by the Willamette Pulp & Paper Company and the Crown-Columbia Company. Our policy as it is issued to the Willamette Navigation Company in no way could be construed to cover paper belonging to the Willamette Pulp & Paper Company, and/or to the Crown-Columbia Paper Company. As our contract is written it insures the Willamette Navigation Company, a Corporation, for account of themselves, and loss if any is payable to the assured.

"In our former letter to you in reference to this [155] matter we inferred that the Standard Marine Insurance Company's policy was written in

(Testimony of Adam Gilliland.)

the name of the Willamette Navigation Company which is our reason for calling your attention to the phraseology of our contract as to prior insurance, and from the papers before us do not see any reason why we should contribute with the Standard Marine Insurance Company for loss above referred to as we are in no way interested in the property belonging to the Willamette Pulp & Paper Company. Furthermore, we are led to believe that the Willamette Navigation Company are not liable to the Crown-Columbia Paper Company for loss in connection with the beaching of the steamer 'Ruth,' for, it is generally conceded that the shipper unless shipping under an insured Bill of Lading, assumes all liability in connection with the marine perils, and the carrier is not liable unless he has issued an insured Bill of Lading

"It is our understanding that General Agent Hewitt is at the present time in Portland and will likely discuss this matter fully with Special Agent Barclay who the undersigned expects to meet in St. Louis the latter part of this month, and at that time we will carefully consider the account of the Crown-Columbia Paper Company who we understand have no insurance on their cargo.

"Very truly yours,

"C. S. TIMBERLAKE,

"General Agent."

(The letter was marked "Libelant's Exhibit 22.")

Q. This shows, does it not, a definite understanding of the situation as early as March 14, 1913?

A. That shows their attitude.

(Testimony of Adam Gilliland.)

Q. It shows a definite understanding that—[156]

The COURT.—It shows what it shows.

Mr. LILLICK.—Very well, your Honor.

Q. Prior to the writing of that letter on March 20, 1913, a full report of this had been sent on to your home office, had it not?

A. I presume it had.

Q. And in that report was a copy of the report that Mr. Honeyman made to your people and forwarded down here?

A. I am just assuming so; I presume it did.

The COURT.—Q. Well, that would be the ordinary course of business, wouldn't it? A. Yes, sir.

Mr. LILLICK.—Q. There is no doubt, is there, Mr. Gilliland, that you knew exactly how much the loss was on that paper within thirty days of the time of the accident?

A. Yes, I think it was within thirty days; I don't know whether it was, or not, but I know it was early after the accident, whether it was within three weeks, four weeks, five weeks or six weeks, I could not say.

Q. You said that Mr. Sutro told you that he did not want to sign the libel; did I understand you correctly? A. Yes.

Q. Mr. Sutro did not sign the libel, did he?

A. I don't know.

Q. I thought you said he wrote you a letter saying that he was delighted with the settlement?

A. He wrote a letter to Mr. Hewett personally.

Q. You have not that letter, have you? A. No.

Mr. COOGAN.—We can get a copy of that letter for you.

Mr. LILLICK.—What date was it, if you remember?

Mr. COOGAN.—A day or so after the payment on April 24. It was a letter that was read to me by Mr. Sutro.

Mr. HENGSTLER.—A copy of it is in Mr. Sutro's files.

Mr. COOGAN.—Yes, and I would be very pleased to get it [157] for you.

Mr. LILLICK.—I am not particularly interested in it, except as to the date, and as to Mr. Gilliland's recollection of that. That is all, Mr. Gilliland.

Mr. HENGSTLER.—If your Honor please, we have one other witness, Mr. Barclay. The only testimony which we expect to adduce from him is purely corroborative of what Mr. Gilliland has testified to. Mr. Barclay was in the same office, the Hartford Fire Insurance Company. It would save time if Mr. Lillick will admit that Mr. Barclay will testify to the same thing.

Mr. LILLICK.—I am quite satisfied to stipulate that he would testify, if sworn, to the same things that Mr. Gilliland has testified to.

Mr. HENGSTLER.—(Addressing Mr. Barclay.) Mr. Barclay, what was your position in the Hartford Fire Insurance Company at the time?

Mr. BARCLAY.—I was special agent for the Marine Department.

Mr. LILLICK.—Mr. Barclay was what they generally refer to as an adjuster.

Mr. BARCLAY.—No, sir.

Mr. LILLICK.—I am not desirous of minimizing the importance of your position, Mr. Barclay, but I was just wondering whether you occupied a position which is referred to frequently as that of adjuster.

Mr. BARCLAY.—No.

Mr. HENGSTLER.—I am uncertain as to one feature; I don't know whether the date when the Standard Company paid the claim of the Libelant has been established. [158]

Mr. LILLICK.—We paid the Willamette Pulp & Paper Company, we did not pay the libelant.

Mr. HENGSTLER.—You paid the Willamette Pulp & Paper Company. You paid them on February 28th, did you not?

The COURT.—That was the date on that paper.

Mr. LILLICK.—Yes, February 28th.

Mr. HENGSTLER.—Now, there is one other thing. Mr. Lillick, you answered the interrogatories that were appended to our answer; I do not know just what the practice is, but your answers can be used as evidence in this case, can't they?

Mr. LILLICK.—I am not sure of that, Mr. Hengstler; I assume they would be taken as admissions, but if there be a variance between the answers and what has been adduced before the Court, it would seem to me there should be something said

now to bring to my attention what may hereafter come as a surprise. What have you in mind?

Mr. HENGSTLER.—I will bring it to your attention and to the Court's attention now. I refer you to this particular answer: It states that the steamer struck the bottom of the river and was beached to prevent her sinking in deep water. That was sworn to by the libelant in the case. That is so inconsistent and directly contradictory of an allegation in your libel, which is also sworn to, and to the evidence of the captain, which has been given under oath, that I want to call your attention to that fact, to that inconsistency. Otherwise, there is no inconsistency in anything else.

Mr. LILLICK.—I don't know the point you have in mind. I should personally say that the captain, being on board at the time, knew better what happened than did my people, who swore to the answer. I think Mr. White, the secretary of the company, [159] verified the interrogatories. They were sent North to be verified by an officer of the company.

Mr. HENGSTLER.—Well, I don't know about that. I know that we waited a year or two before we got a verified answer. There was some difficulty about getting a verified answer to our interrogatories. I think after a year or two we got it.

Mr. LILLICK.—Why do you say there was any difficulty about it when, apparently, Mr. Sutro, who is a charming fellow and absolutely above reproach, expressed himself as being so delighted with the situation, and the whole thing, here, hinges about

a sort of a family affair. I sent the answers as they were drawn from my knowledge gathered by me from the correspondence, and I think Mr. White verified the interrogatories up there and sent them back. They were in accordance with our best information at the time.

Mr. HENGSTLER.—The captain's testimony was taken after that. It is only fair to call your attention to the fact that I am going to make use of that discrepancy. We don't know anything about how this accident occurred. We had to depend entirely upon information furnished by the other side. There are two very different versions of the accident, and I think they are very different in their legal effect. I wanted to be sure that the answers to the interrogatories are considered in evidence in this case. I think that, being a part of the pleadings, they have the same legal force as any other pleading, because they are sworn to.

Mr. LILLICK.—I know of no way by which a mistake of my people could be corrected now. I should think, however, the testimony of the captain would be binding. We will have to leave that to the Court. [160]

Mr. HENGSTLER.—You are in the position of having two witnesses who have sworn to entirely different facts.

Mr. LILLICK.—I was not aware of the difference at all, Mr. Hengstler. The fact, I should take it, would be what the captain testified to. I do not know which will hurt me, but I would say that the

(Testimony of Harry Pinkham.)

captain's testimony is what should be deemed to be correct.

Mr. HENGSTLER.—Of coure, it would be assumed that the libelant, after taking this matter into consideration for a long time, would naturally consult with the captain as to what happened, that whoever made the answers to the interrogatories got his information from the captain, that it was not personally to himself.

Mr. LILLICK.—We are discussing a moot question. I simply made the statement that I thought the captain's testimony would be correct.

The COURT.—Is there any further testimony?

Mr. HENGSTLER.—We rest.

Testimony of Harry Pinkham, for Libelant (In Rebuttal).

HARRY PINKHAM, called for libelant in rebuttal, sworn.

Mr. LILLICK.—Q. In January, 1913, what was your connection with the Standard Marine Insurance Company?

A. I am an underwriter, and I am the manager of the marine department of that company.

Q. Had the Standard Marine Insurance Company, in January, 1913, any insurance whatever for the Willamette Navigation Company?

A. No, not on this particular cargo.

Q. Did you have any policies issued in the name of the Willamette Navigation Company at that time?

(Testimony of Harry Pinkham.)

A. We may have had on a [161] hull, but none on cargo.

Cross-examination.

Mr. HENGSTLER.—Q. Mr. Pinkham, you carried insurance, however, on the cargo of the “Ruth” at that time, did you not? A. Yes.

Q. And after the accident happened, you paid your insured a certain sum of money, something over \$5000, did you not?

A. We advanced the assured a certain sum of money in the guise of a loan.

Q. In what form did you make that advance?

A. The receipt is here in evidence, the form we used. It is in the guise of a loan. We advanced that amount of money.

Q. I mean, did you give them the money in gold, or by check, or in what form?

A. I believe we gave it to them by check.

Q. You are the real libelant in this case—I mean your company is.

A. Well, I don’t know just how to answer that; I believe that the Willamette Navigation Company is the libelant, isn’t it?

Q. Formally they are, but if any money should be recovered from the Hartford, you would get the money, wouldn’t you—your company?

Mr. LILLICK.—I submit that is immaterial, your Honor. At the same time, there is no need of gainsaying that under subrogation we had the right to sue.

Mr. HENGSTLER.—Q. Well, it is a fight between two insurance companies, isn't it, Mr. Pinkham?

A. I would say, frankly, yes.

Mr. LILLICK.—We rest.

(Thereupon the cause was submitted upon briefs to be filed within certain times to be agreed upon between respective counsel.) [162]

[Endorsed]: Filed Aug. 2, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [163]

In the Southern Division of the United States
District Court, for the Northern District of
California, First Division.

IN ADMIRALTY.—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corp.,
Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corp.,
Respondent.

IRA S. LILLICK, Esq., Proctor for Libelant,
ANDROS & HENGSTLER, Proctors for Respond-
ent.

**(Opinion and Order to Enter Decree in Favor of
Respondent.)**

I cannot understand why a receipt for the full amount of one claim against respondent should recite that it is in full satisfaction and compromise

settlement of all claims and demands against it for loss or damage by stranding Steamer "Ruth," to the property described under cargo policy No. 304, if it were intended as a settlement only of the single claim. It was certainly no compromise of that claim, and a receipt in full for such claim need not have referred to any other claims or demands at all, if it were intended as a settlement of that claim alone.

A decree will be entered for respondent.

March 6th, 1922.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Mar. 6, 1922. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [164]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY.—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corp.,
Libellant,

vs.

HARTFORD FIRE INSURANCE CO., a Corp.,
Respondent.

Final Decree.

The above cause having come duly on to be heard on the pleadings and proofs, in open court, on the 23d day of June, 1921, and having been submitted

to the Court on briefs, and the Court being fully advised in the premises, and having rendered and filed its decision and opinion herein on the 6th day of March, 1922,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the libel and amended libel filed in the cause be dismissed, and that respondent do have and recover from Willamette Navigation Company, a corporation, libelant herein, the costs incurred in this action, to be taxed herein.

Dated, San Francisco, March 10th, 1922.

M. T. DOOLING,
District Judge.

Approved as to form.

IRA S. LILLICK,
Proctors for Libelant.

[Endorsed]: Filed Mar. 11, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Entered in Vol. 12 Judg. and Decrees, at page 74.
[165]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY.—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corporation,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corporation,

Respondent.

Notice of Appeal.

To the Hartford Fire Insurance Co., a Corporation,
and to Messrs. Coogan & O'Connor, and Messrs.
Andros & Hengstler, Proctors for Respondent,
and to W. B. Maling, Clerk of the Southern
Division of the United States District Court
for the Northern District of California.

You and each of you will please take notice that
Willamette Navigation Co., a Corporation, libellant
in the above-entitled cause, hereby appeals to the
United States Circuit Court of Appeals for the
Ninth Circuit from the final decree of the District
Court of the United States for the Northern Dis-
trict of California, entered in said cause on the
11th day of March, 1922.

Dated: May 15, 1922.

IRA S. LILLICK,
Proctor for Libellant.

[Endorsed]: Receipt of a copy of the within No-
tice of Appeal is hereby admitted this 15th day of
May, 1922.

COOGAN & O'CONNOR,
ANDROS & HENGSTLER,
Proctors for Respondent.

Filed May 25, 1922. W. B. Maling, Clerk. By
C. M. Taylor, Deputy Clerk. [166]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY.—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corporation,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corporation,

Respondent.

Assignment of Errors.

Now comes the Willamette Navigation Co., the libelant in the above-entitled cause, and claims that in the record, opinion, decision, decree and proceedings in the above-entitled cause, in the above-entitled Court, there is manifest and material error, and said libelant now makes, files and presents the following assignments of errors upon which it relies, to wit:

I.

The Court erred in finding and holding that the libel and amended libel of the libelant herein should be dismissed.

II.

The Court erred in awarding costs to respondent.

III.

The Court erred in finding and holding that the receipt given by the libelant to respondent was

intended as a settlement of the claim by libelant against respondent for damaged paper belonging to the Willamette Pulp & Paper Co. [167]

IV.

The Court erred in finding and holding that the receipt given by libelant was intended as a settlement of both claims by libelant against respondent for damaged paper belonging to the Willamette Pulp & Paper Co. and for damaged paper belonging to the Crown-Columbia Paper Co.

V.

The Court erred in not finding and holding that libelant was entitled to recover of respondent the value of the damaged paper belonging to the Willamette Pulp & Paper Co.

VI.

The Court erred in not awarding costs to libelant.

VII.

The Court erred in not finding and holding that the receipt given by libelant to respondent was intended as a settlement only of the claim of libelant against respondent for damaged paper belonging to the Crown-Columbia Paper Co.

VIII.

The Court erred in not finding and holding that the receipt given by libelant to respondent was not intended as a settlement of the claim by libelant against respondent for damaged paper belonging to the Willamette Pulp & Paper Co.

IX.

The Court erred in not finding and holding that the libelant had an insurable interest in the dam-

aged paper belonging to the Willamette Pulp & Paper Co.

X.

The Court erred in not finding and holding that the paper belonging to the Willamette Pulp & Paper Co. was damaged by a peril named in the policy of insurance issued by respondent to libelant covering said paper. [168]

XI.

The Court erred in not finding and holding that proper and sufficient proofs of loss were duly furnished by libelant to respondent.

XII.

The Court erred in not finding and holding that the libelant was entitled to recover the full value of the damaged paper belonging to the Willamette Pulp & Paper Co.

In order that the foregoing assignment of errors may appear of record, said libelant files and presents the same to said Court, and prays such disposition be made thereof as in accordance with the law and statutes of the United States in such case made and provided, and said libelant prays the reversal of the above-mentioned decree, and that such judgment be entered as ought to have been rendered by the Southern Division of the District Court of the United States for the Northern District of California.

Dated: San Francisco, June 15, 1922.

IRA S. LILLICK,
Proctor for Libelant.

[Endorsed]: Due service and receipt of a copy of the within assignment of errors is hereby admitted this 15th day of June, 1922.

COOGAN & O'CONNOR,
ANDROS & HENGSTLER,
Proctors for Respondent.

Filed Jun. 15, 1922. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [169]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY.—No. 15,514.

WILLAMETTE NAVIGATION CO., a Corporation,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corporation,

Respondent.

Stipulation and Order Concerning Original Exhibits.

It is hereby stipulated and agreed between the proctors for the respective parties hereto that all the exhibits introduced in evidence at the hearing of the above-entitled cause before the above Court may be omitted from the apostles on appeal in said cause and may be filed in the United States Circuit Court of Appeals for the Ninth Circuit in the origi-

nal form in which the same were respectively introduced before the said Court upon the trial of the cause.

Dated: May 15, 1922.

COOGAN & O'CONNOR,
ANDROS & HENGSTLER,
Proctors for Appellee.
IRA S. LILLICK,
Proctor for Appellant.

Approved, May 25th, 1922.

M. T. DOOLING,
Judge.

[Endorsed]: Filed May 25, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[170]

**Certificate of Clerk U. S. District Court to Apostles
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 170 pages, numbered from 1 to 170 inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of Willamette Navigation Company, a Corporation, Libellant, vs. Hartford Fire Insurance Company, a Corporation, Respondent, No. 15,514, as the same now remains on file and of record in my office; said transcript having been prepared pursuant to and in accordance with the praecipe for apostles on appeal (copy of

which is embodied herein) and the instructions of the proctor for libelant and appellant herein.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of Sixty-five Dollars and Five Cents (\$65.05), and that the same has been paid to me by the proctor for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 18th day of July, A. D. 1922.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [171]

[Endorsed]: No. 3894. United States Circuit Court of Appeals for the Ninth Circuit. Willamette Navigation Company, a Corporation, Appellant, vs. Hartford Fire Insurance Company, a Corporation, Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed July 18, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit. [172]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

IN ADMIRALTY.

WILLAMETTE NAVIGATION CO., a Cor-
poration,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Cor-
poration,

Respondent.

**Stipulation and Order Extending Time to and In-
cluding July 15, 1922, to File Apostles on Ap-
peal.**

It is hereby stipulated and agreed that the time
for printing the record and filing and docketing
this cause on appeal in the United States Circuit
Court of Appeals for the Ninth Circuit may be ex-
tended to and include the 15th day of July, 1922.

Dated: June 14, 1922.

COOGAN & O'CONNOR,

ANDROS & HENGSTLER,

Proctors for Respondent.

It is so ordered.

W. H. HUNT,

United States Circuit Judge.

[Endorsed]: No. 15,514. United States Circuit
Court. Willamette Navigation Company, a Cor-
poration, Libelant, vs. Hartford Fire Insurance
Company, a Corporation, Respondent. Stipulation

and Order Extending Time to File Apostles on Appeal. Filed Jun. 14, 1922. F. D. Monckton, Clerk. Refiled Jul. 18, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 15,514.

WILLAMETTE NAVIGATION CO., a Corporation,

Libelant,

vs.

HARTFORD FIRE INSURANCE CO., a Corporation,

Respondent.

Stipulation and Order Extending Time to and Including August 15, 1922, to File Apostles on Appeal.

It is hereby stipulated and agreed that the time for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit may be extended to and include the 15th day of August, 1922.

Dated: July 15th, 1922.

IRA S. LILLICK,

Proctor for Libelants.

COOGAN & O'CONNOR,

ANDROS & HENGSTLER,

Proctors for Respondent.

It is so ordered.

W. H. HUNT,
Circuit Judge.

[Endorsed]: In the United States Circuit Court of Appeals, for the Ninth Circuit. No. 15,514. Willamette Navigation Co., a Corporation, Libelant, vs. Hartford Fire Ins. Co., a Corporation, Respondent. Stipulation and Order Extending Time to File Apostles on Appeal. Filed Jul. 15, 1922. F. D. Monckton, Clerk. Refiled Jul. 18, 1922. F. D. Monckton, Clerk.